App. F. IX-4

1914

Previous References (Legis)

File No. 16-14

Serial Nos. 1-5

Later References

W 1905

General and Revenue Secretariat.

Acollection

Serial Nos. June

Manuscript. **Part B for** May 1919

SUBJECT

Introduction of Indian Enactment

Act into Mysore

Ramaswamy Iyengar

7-11-19

~~Previous References~~ File No 16-1914.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

PROCEEDINGS OF THE GENERAL and REVENUE SECRETARIAT.

For May 1919.

Judicial and Legislative(Legislation).

"A" Collection. Serial No 1-5.

Introduction of the Indian Easements Act into Mysore.

Table of contents

Serial No	Number and date of letter and contents	Page in A Proceedings
1	To the Registrar, Chief Court: No J 1211 dated 29-9-16. Calls for the opinion of the Judges of the Chief Court on the necessity and advisibility of introducing the Indian Easements Act into Mysore.	
2.	From the Registrar, Chief Court. No R/Dis 51 dated 2-2-17. Forwards the opinion of the Judges of the Chief Court in the matter.	
3.	To the First Assistant to the Resident. No Pol 165 dated 15-8-17. Forwards a copy of the Bill and states that the same will be placed before the Legislative Council in due course.	
4.	From the First Assistant to the Resident. No 6682 dated 29-8-17. States that the Resident sees no prima facie objection to the Bill being placed before the Legislative Council.	
5.	To the Compiler, Mysore Gazette. No G 25810 dated 15-5-19. Orders the publication of the Easements Regulation as Regulation No IV of 1919.	

T V R.

G.R.S.-11] 1916-18

GENERAL AND REVENUE SECRETARIAT.

(Legis)

NOTES.

File No: 16-14

FILE HEADING.

Introduction of the Indian Tax system into Mysore

From

No.	Dated	Received

Diary No.	Enclos.	Spare Copies.	Serial No.

BRIEF ABSTRACT OF LETTER.

NOTES AND ORDERS.

NOTES—Fl. Sheet.

PB—35,000—15 6-12

7

Extract from R.A. subject no 8 of 1913

Introduction of certain Acts into Mysore
(1) Mr H.K. Veerabasaiah Lingayat Education Fund Association, Bangalore
(2) Messrs M.C. Rangiengar and others of Mysore

Summary of discussion

The introduction into Mysore of x x x x x (2) the Easement Act; x x x

Reply of Govt:- Will be considered

f.252

G. R. S. 12]

V.R.A. 8(2)

3 (2)

General and Revenue Secretariat.

Legis File No. 16 of 1914-15

Serial No.

1) Subs. S.V.S.
48
29/5/14

2) Shall the chief court be consulted as regards the introduction of this enactment into Mysore?

Examined 31/5 Dyer

~~First Connection~~

Circulated to Court

3) There seems to be very little innovation in the Easements Act on the general law which apparently governs the subject with us at present. However the Asstt Secretary will please note anything which the Act introduced for the first time.

4) What was the reason for restricting it to Madras & Coorg? — H.V. Nanjundaiya

1/9/14

Examined 29

5) Please note all the points & show me.

Examined 1/10/15

NOTE—Contn. sheet.

Examined 1/10

GPB—10,000—13-6-14

SUBJECT No. 7.

Introduction of certain Acts into Mysore.

(1) Messrs. Singri Nanjappa, Tiptur taluk, and K. Chandrasekhariah, Bar Association, Mysore.
(2) Messrs. Padmanna, Chandrasekhariah and K. Venkatasamiah, Nanjangud taluk.

Summary of discussion.—(1) The Transfer of Property Act, the Easements Act, the Negotiable Instruments Act, and the Trust Act may be introduced into Mysore.

(2) The Criminal Tribes Act may be introduced into Mysore.

Mr. Venkatasamiah.—My proposal is that arrangements should be made for Penal Settlements and prevention of offences by criminal tribes.

Reply of Government.—(1) The introduction of the Transfer of Property Act, the Easements Act and the Negotiable Instruments Act is under consideration. It is not intended to introduce the Trust Act at present.

(2) A draft Bill is under consideration.

8-(2)/13

L.R.A. 7(1)(ii)-15

5

4

G. R. S. 12]

General and Revenue Secretariat.

Legis File No. 16 of 1914.

Serial No.

6) Subd. The reason for restricting the operation of the Easements Act only to Madras Coorg and Central Provinces can be gathered only from para 2 of the report of S.C. on the easements Bill which runs as follows:-

"2. As the Government of India does not wish to put the Bill in force in any territory against the wishes of the Local Govt, we have made it apply in the first instance, only to the Presidency of Madras, Coorg and the Central Provinces and as regards the rest of British India, made it extendible to such areas as the respective local Govts think fit."

7) According to the reasons for introducing the Act is given in page 879 of Vol I of Whitley Stokes' Anglo Indian Codes.

S.V.S.

8/8/16

8) Please put up the Statement of Objects & Reasons for Act No VIII of 1891 lodged with Gazette of India 1891 (Jan: to June) containing the SC of 6 and R for the Act is put up.

4/9/16

NOTE—Contn. sheet.

Srinivasa 4/9/16

GPB—70,000—17-12-15

DRA 70(ii)-15

6

5

G. R. S. 12]

General and Revenue Secretariat. | Legs File No. 16 of 1916

Serial No.

9) The Easements Act introduced little or no modifications in the law which was previously in force. The Act was in the first instance confined as to Madras Coorg, Central Provinces, because the Govt. feared that the language was over technical and obscure, and that it was likely to provoke litigation. Subsequently, the Act was found to have worked well, and so was extended to Bombay, the Punjab Provinces &c.

10) Approved, the Chief Court will be consulted. Otherwise adopt Bill with Statement of Objects and reasons.

Ramaswami Iyer
4/9 Iyer

2128
4.9.16.

Sent Secretary 11) Consult Chief Court
K.S. Chandrasekhara Iyer
4/5/9/16 5/9/16

12) Draft
Ramaswami Iyer
5/9 Iyer

13) Subd. with a draft
S.V.S.
22/9/16

14) Done
Ramaswami Iyer
VDK

Sus A
30/9

To The Registrar Ch: Court

No. 1211 29th Sep. 1916

Calls for opinion on the necessity and advisability of introducing the Indian

NOTE—Contn. sheet.

GPB—70,000—17-12-15

L.R.A. 7(xii)-15
1739

7
6

G. R. S. 12]

General and Revenue Secretariat. | Legis File No. 16 of 1914

Serial No.	
	Easements Act into Force.
2	No R.S.'s 851 dated 2/12/17 from the Registrar Chief Court of Mysore forwards the opinion of the ~~Chief~~ Judges of the chief court in the matter.
	15) Submd. S.V.S. 5/2/17 Please put up a bare copy of the bare Act as published by Govt of India. 6/2/17
	By minor 7/2/17 Sup.
	16) Copy of the bare act is not available. A draft to the Supdt Govt Printing, Madras, for 12 copies of the Act is put up. 7/2/17
	15) Some Lakes By 2
	16) Submd. The draft was issued and copies were got. 16) A spare copy is herewith put up. 12/2/17
	17) The Judges of the chief court are favourable to introduction of the Act into the State, and it is reported that this is also the opinion of most of the Judicial officers consulted by the chief court.
	18) The learned chief Judge has also

NOTE—Contn. sheet.

GPB—70,000—17-12-15

WD 1233—GPB—60,000—1-12-16—S.

G. R. S. III-2

General and Revenue Secretariat. | Legis File No. 16 of 1914. 7

Serial No.

dealing with some of the points urged by Messrs Subbanna and Nagappa, made some observations of his own on the provisions of the Act. The points on which a departure from the British Indian Act is considered advisable are the following.

1. S. 28(c). The question for consideration is whether, after an enjoyment of light for 20 years, the owner of the tenement in respect of which such enjoyment had been possessed would be entitled to all the light without any diminution whatsoever at the end of such period. There are two views on this question one is that the owner of the dominant tenement is in such a case entitled to the whole quantity of light which had come to the windows during the period of 20 years. This is the view enunciated in the Section of the Indian Easements Act.

(2) The other view is that the right should be limited to a sufficient quantity of light for ordinary purposes. This latter view is the one adopted by the House of Lords and the English Courts. The Indian ~~Act~~ Act is based on some decisions of the English Courts which must now be considered as bad law. As regards the first view, Lord Halsbury said in

NOTE—Contn. sheet.

WD 1233—GPB—60,000—1-12-16—S.

G. R. S. III-2.

General and Revenue Secretariat.

Serial No. 8

Hedges File No. 16 of 1914

the leading case on the subject thus:-

"If that were the law it would be very far-reaching in its consequences and the application of it to its strict logical conclusion would render it almost impossible for towns to grow, and would formidably restrict the rights of people to utilise their own land. Strictly applied, it would undoubtedly prevent many buildings which have hitherto been admitted to be too far removed from others to be actionable."

20) The view affirmed by the House of Lords in the case quoted above was also the law in British India in cases decided prior to the introduction of the Indian Easements Act.

21) We have no cases ~~which are~~ directly on the point, and the latest view on the subject may therefore be adopted. The learned Chief Judge is also in favour of adopting the rule and the amendment suggested by him may, if approved, be adopted

2 The next point is the amendment of S. 33 which refers to the same point. S.33

In Colls v Home & Colonial Stores Ltd referred to above, the Lord Davey & Lord Lindley held that 'according to the principle and authority the owner of the dominant tenement was

NOTE—Contn. sheet.

Serial No.

entitled to the uninterrupted access through his ancient windows of a quantity of light, the measure of which is what is required for the ordinary purposes of inhabitancy or business of the tenement according to the notions of mankind." In this work, according to this and some recent decisions, "20 years enjoyment of a special or extraordinary light, even to the knowledge of the Servient owner will not give a larger right than a right to ordinary light." As suggested by the Chief Judge, the words 'ordinary purpose' may be used instead of the 'accustomed business'.

3. The last point is a small one relating to the illustration to S. 45. It is seems to be inappropriate to the Section to which it is attached and a slight improvement may be made as suggested.

22) If the above suggestions are approved, necessary amendments will be made accordingly in the draft.

23) Submitted for orders with a draft Bill and a statement of objects and reasons.

S. Srinivasa Iyer
Ex. 20/4

24) Submitted. The three suggestions made

2813
21.4.

NOTE—Contn. sheet.

1739

WD 1233—GPB—60,000—1-12-16—S.

11

G. R. S. III-2.

General and Revenue Secretariat. | Legs File No. 16 of 1914-15 | L 0

Serial No.

1, the chief purpose and desirability of the appointment of Assistant Agents will also be worked out

26/4

6290 (1914) 4-5-17

25 May be considered at a meeting of the Council

26/4/15

2.5.17 Dissanayaka

3/5

3/5

cs. cir. 8/5

12

Extract from the Proceedings of the 423rd Meeting of the Council of His Highness the Maharaja, held at Bangalore; on the 12th July 1917.

4

5. Subject.-Clause ii of the Schedule.

Introduction of the Indian Easements Act into the State.

OPINION OF THE COUNCIL.

7) A draft bill on the lines of the Indian Easements Act as amended in accordance with the suggestions of the Chief Judge concerning Sections 28, 33 and 45, may be placed before the Legislative Council.

Sd. M. Visvesvaraya,

Dewan of Mysore.

"EXT.

D. M. Narasinga Rao 1917

Secretary to Government,
General Department.

WD—156—GPB—1,000—19-7-16.

J 1739

ND.1233—GPB—60,000—1-12-16—S.

13

J. R. S. III-2]

General and Revenue Secretariat.	Legis File No. 16 of 1916

12

Serial No.	
	28/ To the Assistant Secretary, Br. III, for kindly submitting the file to the First Member of Council, with a draft Final Note.
	Draft Final Note and D.S.N are submitted for favour of approval by Srinivasa Iyer 26/7
	First Member Fair Final Note signed by the First Member is put up with a D.S.N. Bos 27/7/17 Dlesai

Yes 13/7

Duraiswamy Raju 13/7

28/7

360 27.7.

Dues Rao 27/7

538 27.7.17

29/7

NOTE—Contn. sheet.

14

No. C. 338 & 17

(For disposal at a meeting)

11. 5. 1917

GENERAL AND REVENUE SECRETARIAT.

Council Matter.

SUBJECT.

(Clause ii of the Schedule)

Introduction of the Indian Easements Act into the State.

CIRCULATED TO THE MEMBERS OF COUNCIL.

By Order,

D. M. Narasimha Rao 11/5

Secretary to Government.

9th May

.....*1917*.

Extraordinary Member of Council. 16.5.17. 11/5

First Member of Council. Opinion recorded.

294 11.5.17 **Second Member of Council.** 11/5 11/5

WD 2012—GPB—1 000—9-2-16

16

Submitted to His Highness.

L 32) *I submit herewith a Final Note by the* First *Member of Council on the subject of* the introduction of the Indian Easements Act into Mysore;

.....

for His Highness' gracious approval.

M. Krishnaraja

Dewan.

16 Aug 1917

8/8

17

Record of Cases submitted for the Orders of His Highness the Maharaja.

Subject.

Introduction of the Indian Easemen Act into Mysore.

123

33)

Order.

~~KRM~~

16/8/17

Sinha
11.8.17

34)

49

GENERAL AND REVENUE SECRETARIAT.

(L. C.)

NOTES.

P. R. Legis 16-14

File No. 5-17

FILE HEADING.

The Mysore Emoluments Bill

From

No. Dated Received

Diary No.	Enclos.	Spare Copies.	Serial No.

BRIEF ABSTRACT OF LETTER.

NOTES AND ORDERS.

NOTES—First Sheet.

WD 1232—GPB—20,000—18-11-1o

20 2

G.R.S. III—3]

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

Subd

According to the agenda for the next meeting of the Legislative Council motion for leave to introduce the Mysore Easements Bill has to be made by the First Member the formal written permission of the Dewan to introduce the Bill is required for being filed in the Legis. Council Records. The usual forms are duly filled up and submitted for being signed by the First Member and the Dewan respectively.

24/9/17

In favour of Signature

EB
24/9

First Member

1236
24.9.17

Very doubtful

Is Case?

24/9

This usual to submit these forms after the Business agenda. If ordered they will be submitted in future.

N.B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

W.D. 84—GPB—60,000—20.7.16

21 3

G.R.S. III—3]

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

1253/20/9

immediately after the receipt of the Residency letter on the matter.

25/9

First Member)

I think there is a

a very necessary Course to

be adopted in publishing

the

25/9

in favour of Dewan's signature

25/9

1816/26.9.17

Mr. V. Lakshmandas)

Signed by the Dewan 26.9.17

Assistant

Secretary

25/9

N.B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

W.D. 84—GPB—60,000—20-7-16

ND 1263—GPB—60,000—1-12-16—S.

G. R. S. III-2]

Legs 16-14

General and Revenue Secretariat.

L.C File No. 5 of 1917

Serial No.	
	Subd Leave to introduce the Mysore Easements Bill was granted by the Council on 28/9/17. A draft Notification publishing the Bill is put up. CB 4/10/17 Done SS 4/10 No 263-L.C. dt 5/10/17 to the Compiler Mysore Gazette Publishing the Bill with Statt of Obs. The Bill was read in council on 28/6/17 and referred to a select committee consisting of Messrs Mir Humza Hussain, C.S. Doraiswamy Iyer, L. Sreeniwasa Iyengar, Rao Sahib H. Chennaiya and B.K. Garudachar. Orders are required as to the date and time for holding the selecting Committee meeting. CB 1/11/18 The Bill may take a full day and perhaps two days. Submitted for favour of orders if any.
	SS 11/11 First Member Friday the 16th inst. 12 noon, in my chambers CB 12/11 Draft above SS 13/11 Subd. with a draft as ordered. CB 13/11

(1) Copy of Abstract Proc. part ws. (Flag W)

(2) Copy of Abstract Proc. part ws. (Flag V)

56/12.7

Done SS 14/11

NOTE—Contn. sheet.

Legis 16-14

494

23

5

G. R. S. III-2j

General and Revenue Secretariat. L.C File No. of 191

Serial No.

Subd.

The Select Committee met both on the 26th July: 1918 and also on the 16th Aug: 1918.

A draft report is put up.

17/9/18

Subd. with a typed draft as revised

Inf as arranged.

31/8/18

30/8

10/16

2-30

Joint Member)

Secy Offg. What about the minute of dissent of the Honble Member

Well

30/8/18

The Note has not yet been received

Sd. It will be submitted for perusal on receipt.

31/8

10/26

2/9.

Joint Member)

Well

2/9

Joshi

Subd. with a D.O. covering letter

3/9

Joshi

3/9

11-25

Well

NOTE—Contn. sheet.

W94 24 6

G. R. S. III-2]

General and Revenue Secretariat. L. C. File No. 5 of 191 7

Serial No.

Subs. Replies have been received from all approving of the Report. Mr Chunniya has made some special alterations in the language of the report. Mr. Hamza Hussain has not sent any dissenting note. He has approved of the Bill. A draft to the compiler is also put up

10/9/18

Please adopt Bill first & then move Mr Chunniya's motion

Passing 18/9/18

To the Compiler, Mysore Gazette

No 103/LC. Dt 12-9-18

Publishes the Select Committee's Report for general information

Copy put up Flag W

Copies of the Report of the Select Committee have been sent to all the members of the Legislative Council on the 22nd February 19 (Rule 46) and the Bill is included in the draft agenda for the next meeting.

The motions to be made are (1) that the Report of the Select Committee as well as the Bill be taken into consideration and (2) that the Bill be passed, the sanction of the Govt of India not being

NOTE—Contn. sheet.

WD A 1789—GPB—60,000—20-8-18—S.

G. R. S. III-2]

General and Revenue Secretariat.

Legs File No. X 16 of 1917.19

694 .281 25

Serial No.	
	necessary for passing it into law, Rule 46 and 50. The file is subd for the kind perusal of the first member as ordered in the Agenda file. Subd ASR 11/3 I Member D.W. 14/3
	39) The Select Comtee repat. and the Bill were taken up for Consideration at the meeting of the 24th March and the motion that the Bill be passed was carried.
	40) The gracious Sanction of HH is required to promulgate the Bill as Law. Drafts of Trial Submission notes are put up.
	41) The date from which the Regulation is to come into force has to be mentioned. Subd. ASR 4/4 As it will be as new Regn, it may perhaps be brought into force from 1st July 1919
	42) Submitted for orders P. Mahadevayya D.W. 8/4 I Member
	43) Agd - D.F.N slightly revised & agd - We are not sure of the decision in the Legl Dept in the file! It is desirable to do so always K S Chelmsford 9/4/19

Returned from I Member Mic on 27/3/19

Should this not be Mic as the Head? Vert Mic

Mic 29.8.17. (Reg 4.)

1297/19.4.19

No objection to be attended to D.W. 21/4

NOTE—Contra. sheet.

F.N. signed by Member 2.6.19.

WD A 1789—GPB—60,000—20-3-18—S.

G. R. S. III-2]

3817

General and Revenue Secretariat. | Legs. File No. 15 of 191 14

Serial No.

DEWAN'S OFFICE.
Recd. on APR 30 1919
Reg. No. 6762.

Note—Contn. sheet.

Final Note by the First Member of Council.

Subject:—

Promulgation of the Mysore Easements Bill into law.

44 The Mysore Easements Bill was considered and finally passed by the Legislative Council in all its stages at the meeting held on the 25th March 1919.

45 2. The statement of objects and reasons explains the scope and purpose of the Bill. No changes (beyond verbal or typographical ones) were made in the Report of the Select Committee.

46 3. The Bill does not require the previous sanction of the Government of India to its enactment as law.

47 4. The gracious sanction of His Highness the Maharaja is solicited to the promulgation of the Bill as law with effect from 1st July 1919.

21st April 1919.

MEMBER OF COUNCIL.

Submitted to His Highness.

(28) *I submit herewith a Final Note by the*....First.. *Member of Council on the subject of*....the promul-gation of the Mysore Easements Bill into law,

.....

for His Highness' gracious approval.

Dewan.

8-5-19

29

Record of Cases submitted for the Orders of His Highness the Maharaja.

Subject.

Promulgation of the Mysore Easements Bill into law.

1147

69) **Order.**

~~KRW~~

7/5/19

Chief secy 4
12.5
asstt secy
12/5
12/5

General and Revenue Secretariat.

Legis. File No. 5 16 of 1919

Serial No.	
50	Submitted with a draft G. O. 8/5.19 13 Apr 1919
51	Issued 14/5
5	Do The Compiler, Mysore Gazette No. G. 25-810 dy 15-5-19 orders the publication of the Easements Regn. as Regn No. 16 of 1919. Sd. Spare copies of the Regn have been received. Submitted with drafts G. the Regn and to the Advocate General forwarding the usual no. of copies 8/5 14/8/19 Apr 14/8/19
6	Issued 21/8
7	W.T.A.R.P.D.T. No 2638 1.9.19 forwards 9 copies of the publication 2 The Secy to the Govt of H.S.H. The Maharaja forwards 2 copies of the Regn

NOTE—Contn. sheet.

REPORT OF THE SELECT COMMITTEE ON THE MYSORE EASEMENTS BILL.

******

We the members of the Select Committee appointed to consider the Mysore Easements Bill have the honour to report that the Bill was carefully considered by us and requires no alteration except the few alterations of a purely verbal or typographical nature. The question of recognising the right of privacy and that relating to the amendment of S.28 (c) were discussed at great length in the Committee. In the case of the right of privacy, it has generally been recognised as an easement that may be acquired in virtue of a local custom. The Bill recognises the validity of such a custom and we are of opinion that independently of such local usage the right should not be recognised. This view is in accordance with the law in British India, and the consequences of a different rule would lead to alarming consequences to the owners of house propert

Next as we consider that S. 28 (c) of the British India Act is not in accordance with the law as to remedies in Sectio 33 and 35, the change proposed in the Bill is absolutely necessary and brings the law into accord with the law in England and with the law of British India in places where the Easements Act is not in force.

We therefore recommend that the Bill be passed.

30/8/16

32

NOTIFICATION.

No. 103—L. C,, dated 12th September 1918.

Under Rule 40 of the Rules for the conduct of business of the Mysore Legislative Council, the following Report of the Select Committee on the Mysore Easements Bill is published for general information.

By Order,
G. SREENIVASA IYER,
Secretary, Mysore Legislative Council.

Report of the Select Committee on the Mysore Easements Bill.

We, the members of the Select Committee appointed to consider the Mysore Easements Bill, have the honor to report that the Bill was carefully considered by us and requires no alteration except the few alterations of a purely verbal or typographical nature. The question of recognising the right of privacy and that relating to the amendment of clause 28 (*c*) were discussed at great length in the Committee. In the case of the right of privacy, it has generally been recognised as an easement that may be acquired in virtue of a local custom. The Bill recognises the validity of such a custom (*vide* clause 18) and we are of opinion that independently of such local usage the right should not be recognised. This view is in accordance with the law in British India, and the promulgation of a different rule would lead to alarming consequences to the owners of house property.

Next, as we consider that section 28 (*c*) of the British India Act is not in accordance with the law as to remedies in sections 33 and 35, the change proposed in the Bill is absolutely necessary and brings the law into accord with the law in England and with the law of British India in places where the Easements Act is not in force.

We therefore recommend that the Bill be passed.

M. KANTARAJ URS.
MIR HUMZA HUSSAIN.
C. S. DORASWAMI IYER.
H. CHENNAIYA.
B. K. GARUDACHAR.

G. R. S. 26]

33

Legis. File No. 16-14

Serial No. 1

Diary No. of letter replied to .....

No. J 1211. Dt 29-9-16

General and Revenue Secretariat

( )

, *the* 191

Date of issue 29th September 1916.

Signed by M. C. Srinivasa Iyr

To

The Registrar

Chief Court of Mysore.

Bangalore

Sir

I am directed to invite your attention to subject No 7 (1) of the Proceedings of the Representative Assembly 1915, in the matter of introducing the Indian Easements Act into Mysore and ~~to report~~ the Reply of

over.

SUBJECT.

Govt therein and to request you to be so good as to obtain and communicate to Govt the opinion of the Judges of the Chief Court on the necessity and advisibility of introducing the law into Mysore

I have &c

28/9

for Secretary to Govt

G.D.

24/9/16

List of enclosures

Copied by

Examined by

GPB—20,000—10-10-14

8 FEB 191

DIARY No. 47/39
19 -19
SECTION Legis.
FILE No. 16-14
SERIAL No. 19

R. Dis. No. 51.Leg.1

Chief Court of Mysore,
Bangalore,
Dated 22nd January 1917.
2-Febys

JUDICIAL
5 FEB 1917

From

~~N. Gopaliengar Esq., B.A., LL.B.,~~
The Registrar, Chief Court of Mysore,
B A N G A L O R E.

To

D. M. Narasinga Rao, Esq., B.A., B.L.,
Secretary to the Government of Mysore,
General Department,
B A N G A L O R E.

Sir,

Adverting to your leeter No.J.1211/Legis.14-1 dated the 29th September 1916 requesting the favour of the opinions of the Judges on the necessity and advisabi-lity of introducing the Indian Easements Act into Mysore, I am directed to forward the opinions of the Judges and to state that they recommend the introduction of the Act, with such modifications as may be deemed desirable.

I have the honour to be,
Sir,
Your most obedient servant.

N. Gopalaiengar

REGISTRAR.

B. S.

INTRODUCTION OF THE EASEMENTS ACT INTO THE MYSORE STATE.

OPINIONS OF THE JUDGES

Most of the officers consulted content themselves with stating that it is advisable to introduce the Act, on the ground that even now its principles, rules and definitions are to a great extent adopted in deciding questions of easements and customary rights in Mysore.

The Act has been in force in Madras and Coorg since 1882 and in Bombay since 1891 so that by introducing it here the legislature will assimilate our law to the law of all our neighbours. In my opinion it is advisable to introduce it.

The Munsiff of Dodballapur suggests that Sec. 2. may give rise to difficulties, but that section does not confer rights: it merely preserves existing rights and in that view seems unobjectionable.

Mr. Subbanna as Subordinate Judge of Mysore offers certain criticisms and suggestions, and expresses a fear that article 131 of the Limitation Regulation may be found to conflict with the law relating to the acquisition of easements by user in some cases.

His fear in this respect seems to be groundless: article 131 applies to limit the period within which a suit may be brought to establish a recurring right, and that right may be an easement, but section 15 which corresponds to sections 26 and 27 of the Limitation Regulation

provides

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provides a statutory method of acquiring an easement, and does not apply to other modes of acquisition: to rights otherwise acquired article 131 may if appropriate apply See 6 Calcutta 394 on the corresponding provision in the Limitation Act of 1871.

In any case Mr. Subbanna's objection applies as much to the existing as to the proposed law.

Mr. Subbanna further desires that the contemplated Regulation should be made more comprehensive than the British India Act so as to include rights in gross, the principal characteristic of which is of course that they are not dependent on the ownership or occupation of a particular dominant heritage. Such rights are not within the definition of easement in section 4 of the Easements Act, but some of them it has been held fall within the definition of that word in section 2 of the Limitation Regulation which does not limit the right to the "owner or occupier of certain land". That definition applies to 'removál or appropriation' of something, and so to what is called a profit a prendre, but not to such rights as a right of way in gross.

Mr. Subbanna does not elaborate his view on the subject and there are difficulties in applying the provisions as to acquisition by user to rights in gross (vide Peacock on Easements in India p.228 - 2nd Edition). They are as pointed out by the author really in the nature of licenses and

are

are personal rights which in some cases are not transferable. I am not clear that we shall gaine anything by attempting a comprenensive definition of such rights, or by trying to lay down a rule as to the proof required to establish them. The right to take water from a well on private land instanced by Mr. Subbanna if it is not an easement proper, attached to a certain dominant heritage may be a customary right referredto in section 2(b) of the Act, and the proof of it would be the proof of a local custom as to which the rules are well established. So the right to hold a jatra on private land belonging to another may be vested as an easement in a dominant owner or may be an easement given by a local custom to the inhabitants of a particular locality. (Section 18).

It is perhaps best to leave these rights to be proved as customary rights or easements, for it is obvious that in some cases it may be unreasonable to uphold them, and reasonableness is essential to a custom though not to an easement.

I do not see any very simple way of including in the Regulation all rights to make use of other people's property but have an open mind on the subject in case any suggestion is made to add a chapter or section on rights in gross.

Mr. Subbanna suggests that 20 years may be inappropriate as a period for acquisition of an easement under section 15, but it is the period prescribed by the law all round us as well as in the Limitation Regulation now in force and he

does

does not say whether he thinks it too short or too long. I do not myself think that 2 years after obstruction is too short a period for the suit, at any rate if that period does not apply to acquisition of easements in other ways than by 20 years enjoyment.

The effect of section 15, as of the present law under the Limitation Regulation is that the right is not acquired until there is a suit to contest it, and that in order to acquire it enjoyment must continue up to 2 years before the suit. It is not enough to prove an enjoyment for 20 years which ended say 10 years ago, and that is not unreasonable and is the present law. But whether the Act prevents proof of easements by long enjoyment otherwise than under section 15 may require consideration.

Mr. Nagappa points to a difficulty in the Act which is discussed by Peacock under the head prescriptive right to light (pp.81 - 97 2nd Edition and which requires consideration. It may be best to amend section 28 (c) so as to bring it ~~most~~ more into accord with the present law in England and with the law of the Easements Act as to remedies in sections 33 and 35. Section 15 may also require modification to make the matter clear. Vide my note on section 28 (c) below.

I may make a few comments of my own:-

Section. 5. The word 'annexed' in the illustrations to section 5 gave some trouble to the High Court of

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(15 All. 270)

of Allahabad in Watzler v Sharpe, and its use is easily avoided if necessary. But the meaning is clear enough, and the word seems convenient.

Section 13. These are easements created by the transfer, not enjoyed as easements before the transfer. If they are so enjoyed they pass under section 19.

They must be either of necessity or apparent and continuous: the transferor cannot be assumed to grant easements of other kinds ~~in~~ by implication by his transfer nor can the transferee be assumed to have accepted the burden of other kinds of easements.

There are a good many decisions on the section, but I do not think it has created much difficulty except in regard to clause (d). In Watzler v Sharpe perhaps as Peacock suggests (p.310) its purport was not exactly appreciated.

Clause (d) departs from the English Law and has been criticized in 18 Bombay 616; the idea is that the transferor cannot derogate from his grant, and if he sells without any express reservation of anything he ought not to be allowed to reserve anything impliedly. Judicial opinion in England was not uniform on the point.

The implied reservation of easements apparent and continuous i.e. such as are patent to the purchaser does not however seem to be a great injustice to him. In the other view if I sell a piece of land adjoining my house, the purchaser, unless

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unless I make an express reservation, can build so as to block my windows. It is hard to say which is the preferable doctrine and I do not know if it has been settled in Mysore, but as our neighbours in Madras and now in Bombay have that of the Easements Act, I think we may adopt it too.

Section 14. The generally accepted rule is that there can be only one way of necessity, but it has been suggested that the circumstances of this country may practically render it really necessary to have more ways than one. (16 Bombay 552; 19 Bombay 797) in 28 Madras 485 this was held to be going beyond the Easements Act. I do not know if any modification is required for Mysore but the point may be considered: or the section may be left to judicial interpretation of the word 'necessity'.

Section 15. A principal difference between this and section 26 of the Limitation Regulation is that section 15 does not require in the case of the negative easements of light and air the enjoyment to be "as of right" but only 'as an easement'. It is difficult to say why the words as of right were introduced into section 26 of the Limitation Regulation as regards rights to light and air; they are not very appropriate to the enjoyment of those negative easements. If such easements are enjoyed openly and peaceably and as easements , i.e. without permission or contract, it is difficult to see what more can be done in the way of assertion of a right. The language of the Act may be adopted in preference to the language of the Limitation Regulation.

Section

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Section 17. Under this section easements acquired under section 15 are termed prescriptive rights and the question arises whether by virtue of that definition no rights can be proved by long enjoyment otherwise than under the circumstances for which the section provides. Wallis J and I held in 5 Madras Law Times 107 that ~~therexis~~ that is not so and that long enjoyment may still be proof of a legal origin, but we did not discuss section 17. The Privy Council case on which we relied was under the Limitation Act.

It will be seen that the section enumerates some rights which cannot be acquired under section 15, and I conceive that those rights can never be presumed to have had a legal origin; but the section as it stands by excluding them from section 15 might be held by implication to assume that they can be proved by long enjoyment. But perhaps it might be held unreasonable to presume that any owner of land would grant such rights, and apart from grant there can really be no legal origin, and so as a matter of fact no difficulty would arise as to them.

I am not sure that it is necessary to make any change in the Act, but if it is deemed necessary an explanation may be added or the section might run somewhat as follows:--

"Easements acquired under section 15 as well as those of which a legal origin is established by proof of long enjoyment only are said to be acquired by prescription" etc.

or more simply perhaps

"'Prescriptive rights' include easements acquired under section 15".

which would make it clear that there may be others. and the opening sentence of the second paragraph might run

"None of the following rights can be acquired as prescriptive rights".

Section 18. As Mr. Subbanna points out the section does not include rights in gross and if they are to be included in the Act they may require separate provisions.

Section 28 (c). This as is pointed out by Mr. Nagappa may have to be modified with reference to the remedies provided by sections 33 (damages) and 35 (injunction). If section 15 deals with the extent of the easement, that is to say if 'the access and use of light and air' in that section means the access and use as it has been enjoyed for 20 years, it may be necessary to modify that section also. But section 26 of the Limitation Act follows section 15 and the recent Calcutta decisions do not seem to have found any difficulty in reducing the easement of light to limits laid down by recent decisions in England. But see 29 Allahabad 571 on the point.

If the legislature accepts the later English view section 28 (c) might be made to run something like this: "..... is that quantity..... which was reasonably sufficient, coming through that opening, for the convenient and comfortable use

and

and enjoyment of the house and its beneficial employment as it was enjoyed at the commencement of the prescriptive period."

The idea is this: if I have one old light and 2 new ones the servient owner could block the old one without doing me any harm: but he ought not to be allowed to do so, for that would prevent my closing my own new ones if I wished.

But the form of the alteration requires very careful consideration and a perusal of the judgments in Colls V. Home and Colonial Stores (1904) A.C. 179 and cases which have followed it will be found helpful.

The legislature must decide which policy to follow. So far as I know there is no agitation even in Bombay (which approximates more to the great cities to which the English Law is applied than does Madras or any of our cities here), for the alteration of section 28 (c) to bring it into accord with the latest pronouncements of English law and it may be considered advisable to adhere to the present act till it is found necessary to alter it in British India.

But if so it will be necessary to make some changes in sections 33 and 35 (a) for it seems useless to declare the extent of an easement and not to give a co-extensive remedy either by way of damages or by injunction.

This point requires and no doubt will receive full and careful consideration before the

Regulation

Regulation is drafted. My own opinion is that the doctrine of Colls V. Home and Colonial Stores is the better, and while not depriving dominant owners of all they ought to want tends to make less difficult these expansion of cities.

Section 33. Explanation II. In connection with the question whether this should not be changed, the words 'accustomed business' may be considered. If a man has been carrying on in the house a business requiring a special and abnormal quantity of light throughout the whole of the prescriptive period, it may be right to secure him that quantity, but if he has only shortly before the close of the period started a business requiring extra light, the servient owner ought not to have an extra burden thrown upon him. What then is 'accustomed business'? It may be better to say as suggested in some English cases an'ordinary business' leaving it to be determined as a matter of fact what is an ordinary business from the point of view of the necessity for light and air; or as I have suggested altering section 28 (c) it might be as well for 'accustomed business' to read the business if any which was ~~caused~~ carried on ~~them~~ there at the commencement of the prescriptive period. It is not right that a business requiring extra light and air should impose a burden by less than 20 years enjoyment and if a man changes the use of his house as of course he may legitimately do he does so at the risk of injury from his neighbour's equally legitimate use of his own land.

Section 43. Peacock points out (p. 584) that section 43 (a) is not very clear or comprehensive in the matter of an increase in the burden thrown on the servient tenement by alteration of the dominant tenement

tenement by opening new or closing old apertures for the admission of light and air.

If he means that the extent of the easement of light is that laid down in 28 (c) and that under 43 (a) it would be held that the dominant heritage is entitled to all the light it has been getting throughout the prescriptive period he may be right.

It may be clear that the easement of light is intended to be used to its fullest extent by the dominant heritage, but under the later cases the reduction in the area of an ancient light may throw a greater burden on the servient heritage and an alteration in the ancient light so as to have that effect may extinguish the easement.

If I have two windows I am entitled to a sufficiency of light through both: under the new and better doctrine the servient owner may build so as to deprive me of some of the light which I actually receive so long as a sufficiency is left. This he can do let us say by building in front of one of my windows but not the other. But if I close one of my windows before he begins to build a greater burden is thrown upon him for he may be unable to build in front of the remaining one without reducing my light below what is sufficient for me. In those circumstances the easement may possibly be extinguished by my act; but the judgment of the Master of Rolls in Ankerson v. Connelly makes that doubtful. I can't complain so long as he does nothing which would have been wronging me had

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had I kept my lights as they were. The question of extinction of an easement of light by alteration of the dominant heritage (the theory seems to be that the alteration evidences an intention of abandonment though it may also be regarded as forfeiture) is a very difficult one and it is impossible to define the kind of alteration which will be taken to have that effect except as in the Act in the most general terms. The qualification to be found in Section 43 (a) is perhaps difficult to apply to easements of light but if it be understood, on the newer and better doctrine that the normal extent of the easement is the sufficiency only of the light and not its former quantity it will not be possible to hold that the easement was in the absence of an express grant, intended to be used beyond that extent and no harm will be done by retaining clause (a).

Section 45. The illustration assumes that the road is the whole of the servient heritage or else it is not an illustration of this but rather of the preceding section.

If the cliff as well as the road form part of the servient heritage then if the way is a way of necessity the easement is not lost, (Vide section 44) though A may have to find a way over the cliff instead of round the foot of it. Perhaps no illustration is really necessary

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necessary, but it would be easy to alter so as to be clear: e. g. A has a right of way over a strip of land between a cliff and the sea, which forms the whole servient heritage. The strip is completely submerged and washed away. The easement is extinguished.

Cases where the whole servient heritage is destroyed are few: most cases of extinction by superior force will fall under section 44.

The chapter on licenses does not depart materially from the law on the subject applied where the Act is not in force. The only difficulty is as to revocation or rather revocability, and I do not see any way to make that more clear than the Act does. The Act expressly (Section 64) recognises the principle that revocability is not inconsistent with liability to pay compensation when the license is for valuable consideration and is improperly revoked. It was recently held in England that the holder of a ticket for a seat at a place of entertainment has an interest which prevents the license from being revocable, but that decision has not met with unqualified approval from lawyers and we need not incorporate it ~~on~~ in our Regulation: in such cases the aggreived licensee may if he has not an interest get compensation for breach of contract.

H. Gopalaswamy

Registrar.

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Public Offices Buildings
Bangalore

Dated 24th September 1907

To

Sir M. Visvesvaraya B.A., C.E., M.Inst.C.E., K.C.I.E.,

Dewan of Mysore.

SIR,

I beg to request your sanction in writing under Section 12 of Regulation I of 1907, for introducing ~~a bill~~ the Mysore Easements Bill

at a meeting of the Mysore Legislative Council.

I have the honor to be,
Sir,
Your most obedient servant,

Member.

24/9/07

OFFICE OF THE DEWAN OF MYSORE.

Dated 26th September 1907

Rajaseva dhurena

Mr. M. Kantaraj Urs B.A., C.S.I. : Member of the Mysore Legislative Council, is hereby permitted to introduce ~~a bill~~ the Mysore Easements Bill

.....at a meeting of the said Council, subject to the rules for the time being in force under the Mysore Legislative Council Regulation, No. I of 1907.

M. Visvesvaraya

Dewan of Mysore.

26.9.07.

GS
2/11/19

1 4/10

G. R. S. VI—S-III/13]

DRAFT

SUBJECT.....

.....

.....

Section. 2 P C
File No. 52-17
Serial No.

No. 263/L.C.

Diary No. of letter replied to.....

GENERAL AND REVENUE SECRETARIAT,

( )

, *the*.....*191*

Date of issue.....5/10/17

Signed by..M. B. Sreenivasa Iyer

NOTIFICATION.

Under Rule $\frac{31}{32}$ of the Rules for the conduct of business of the Mysore Legislative Council, the accompanying Mysore Easements Bill is published for general information with the statement of objects and reasons.

By Order,

4/10

Secretary, Mysore Legislative Council.

(Here print the accompanying Bill with the statement of objects and reasons).

To

The Compiler, *Mysore Gazette* for publication in Part III of the Gazette in English and Kannada and for sending 100 copies in English and 25 copies in Kannada to this office. Proof should be sent to this office for approval before publication.

Draft
ok
4/10/17

5/10

G. R. S. VI—s-III/3]

DRAFT.

SUBJECT.....

.....

.....

Section.
File No.
Serial No.

Diary No. of letter replied to.....

No. 8-12 L-6.

OFFICIAL MEMORANDUM.

GENERAL AND REVENUE SECRETARIAT,

( )

the.....*191*

To

.....

Member, Mysore Legislative Council.

Date of issue 15th July 1918

Signed by Mr. G. Srinivasa Iyer

Mahomed Humza Hussain
C. S. Doraswamy Iyer
L. Sreenivasa Iyengar
Rao Sahib H. Channaiya
B. K. Garudachar

A meeting of the select Committee to consider the bill to define and amend the law relating to Easements and Licenses

.....

will be held in the Chambers of the First Member of Council, Public Offices Buildings, Bangalore, at 12 noon on Friday the 26th July 1918.

By Order,

Secretary, Mysore Legislative Council.

Copy to the cash section for making necessary arrangements including for tiffin arrangements.

List of enclosures.

Copied by.....

Examined by.....

WD 02233—GPB—2,000—13-3-17

G. R. S. VI—G/32] 1578/17

SUBJECT.....

.....

.....

Diary No. of letter replied to.....

Section Legis
File No. 16-16
Serial No. 3

GENERAL AND REVENUE SECRETARIAT,
( )
, *the* 191 .

No. 901-165/Legis 15-8-

Date of issue 15th August 1917

Signed by [redacted]

To The J. A. Resident in Mysore, Bangalore

Sir

I am directed to forward herewith a copy of the Mysore Easements Bill which will be placed before the Legislative council in due course. The statement of objects and reasons accompanying the Bill explains the scope and objects

over.

1578

of the measure.

I have &c.

For Secretary to Govt

E.D.

List of enclosure

One Copy.

Copied by

Examined by

WD 86—GPB—60,000—15-11 16

NOTIFICATION.

No. 263—L. C. dated 5th October 1917.

Under Rule 31 of the Rules for the conduct of business of the Mysore Legislative Council, the accompanying Mysore Easements Bill is published for general information with the Statement of Objects and Reasons.

By Order,

G. SREENIVASA IYER,

Secretary, Mysore Legislative Council.

The Mysore Easements Bill.

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A Bill to define and amend the law relating to Easements and Licenses.

Whereas it is expedient to define and amend the law relating to Easements and Licenses; His Highness the Maharaja is pleased to enact as follows:—

Preamble.

Preliminary.

Short title. 1. (1) This Regulation may be called the Mysore Easements Regulation,

Extent. (2) It extends to the whole of Mysore; and

Commencement. (3) It shall come into force on the first day of

Savings. 2. Nothing herein contained shall be deemed to affect any law not hereby expressly repealed, or to derogate from—

(*a*) any right of the Government to regulate the collection, retention and distribution of the water of rivers and streams flowing in natural channels and of natural lakes and ponds, or of the water flowing, collected, retained or distributed in or by any channel or other work constructed at the public expense for irrigation;

(*b*) any customary or other right (not being a license) in or over immoveable property which the Government, the public or any person may possess irrespective of other immoveable property; or

(*c*) any right acquired, or arising out of a relation created, before this Regulation comes into force.

Repeal of Regulation IV of 1911, sections 26 and 27. 3. Sections 26 and 27 of the Mysore Limitation Regulation, 1911, and the definition of "easement" contained in that Regulation are repealed. All references in any Act or Regulation to the said sections, or to sections 26 and 27, of Act No. XV of 1877, shall be read as made to sections 15 and 16 of this Regulation.

CHAPTER I.

Of Easements generally.

"Easement" defined. 4. An easement is a right which the owner or occupier of certain land possesses, as such, for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon, or in respect of, certain other land not his own.

Dominant and servient heritages and owners. The land for the beneficial enjoyment of which the right exists is called the dominant heritage, and the owner or occupier thereof the dominant owner; the land on which the liability is imposed is called the servient heritage, and the owner or occupier thereof the servient owner.

Explanation.—In the first and second clauses of this section, the expression "land" includes also things permanently attached to the earth: the expression "beneficial enjoyment" includes also possible convenience, remote advantage, and even a mere amenity; and the expression "to do something" includes removal and appropriation by the dominant owner for the beneficial enjoyment of the dominant heritage, of any part of the soil of the servient heritage or anything growing or subsisting thereon.

Illustrations.

(*a*) A, as the owner of a certain house, has a right of way thither over his neighbour B's land for purposes connected with the beneficial enjoyment of the house. This is an easement.

(*b*) A, as the owner of a certain house, has the right to go on his neighbour B's land, and to take water for the purposes of his household out of a spring therein. This is an easement.

(*c*) A, as the owner of a certain house, has the right to conduct water from B's stream to supply the fountains in the garden attached to the house. This is an easement.

(*d*) A, as the owner of a certain house and farm, has the right to graze a certain number of his own cattle on B's field, or to take for the purpose of being used in the house, by himself, his family, guests, lodgers and servants, water, or fish out of C's tank, or timber out of D's wood, or to use, for the purpose of manuring his land, the leaves which have fallen from the trees on E's land. These are easements.

(*e*) A dedicates to the public the right to occupy the surface of certain land for the purpose of passing and re-passing. This right is not an easement.

(*f*) A is bound to cleanse a water-course running through his land and keep it free from obstruction for the benefit of B, a lower riparian owner. This is not an easement.

Continuous and discontinuous, apparent and non-apparent easements.

5. Easements are either continuous or discontinuous, apparent or non-apparent.

A continuous easement is one whose enjoyment is, or may be, continual without the act of man.

A discontinuous easement is one that needs the act of man for its enjoyment.

An apparent easement is one the existence of which is shown by some permanent sign which, upon careful inspection by a competent person, would be visible to him.

A non-apparent easement is one that has no such sign.

Illustrations.

(*a*) A right annexed to B's house to receive light by the windows without obstruction by his neighbour A. This is a continuous easement.

(*b*) A right of way annexed to A's house over B's land. This is a discontinuous easement.

(*c*) Rights annexed to A's land to lead water thither across B's land by an aqueduct and to draw off water thence by a drain. The drain would be discovered upon careful inspection by a person conversant with such matters. These are apparent easements.

(*d*) A right annexed to A's house to prevent B from building on his own land. This is a non-apparent easement.

Easement for limited time or on condition.

6. An easement may be permanent, or for a term of years or other limited period, or subject to periodical interruption, or exercisable only at a certain place, or at certain times, or between certain hours, or for a particular purpose, or on condition that it shall commence or become void or voidable on the happening of a specified event or the performance or non-performance of a specified act.

Easements restrictive of certain rights. Exclusive right to enjoy.

7. Easements are restrictions of one or other of the following rights (namely):—

(*a*) the exclusive right of every owner of immoveable property (subject to any law for the time being in force) to enjoy and dispose of the same and all products thereof and accessions thereto;

Rights to advantages arising from situation.

(*b*) the right of every owner of immoveable property (subject to any law for the time being in force) to enjoy without disturbance by another the natural advantages arising from its situation.

Illustrations of the Rights above referred to.

(*a*) The exclusive right of every owner of land in a town to build on such land, subject to any Municipal law for the time being in force.

(*b*) The right of every owner of land that the air passing thereto shall not be unreasonably polluted by other persons.

(*c*) The right of every owner of a house that his physical comfort shall not be interfered with materially and unreasonably by noise or vibration caused by any other person.

(*d*) The right of every owner of land to so much light and air as pass vertically thereto.

(*e*) The right of every owner of land that such land, in its natural condition, shall have the support naturally rendered by the subjacent soil of another person.

Explanation.—Land is in its natural condition when it is not excavated and not subjected to artificial pressure: and the "subjacent and adjacent soil" mentioned in this illustration means such soil only as in its natural condition would support the dominant heritage in its natural condition.

(*f*) The right of every owner of land that, within his own limits, the water which naturally passes or percolates by, over or through his land shall not, before so passing or percolating, be unreasonably polluted by other persons.

(*g*) The right of every owner of land to collect and dispose within his own limits of all water under the land which does not pass in a defined channel and all water on its surface which does not pass in a defined channel.

(*h*) The right of every owner of land that the water of every natural stream which passes by, through or over his land in a defined natural channel shall be allowed by other persons to flow within such owner's limits without interruption and without material alteration in quantity, direction, force or temperature: the right of every owner of land abutting on a natural lake or pond into or out of which a natural stream flows, that the water of such lake or pond shall be allowed by other persons to remain within such owner's limits without material alteration in quantity or temperature.

(*i*) The right of every owner of upper land that water naturally rising in, or falling on, such land, and not passing in defined channels, shall be allowed by the owner of adjacent lower land to run naturally thereto.

(*j*) The right of every owner of land abutting on a natural stream, lake or pond to use and consume its water for drinking, household purposes and watering his cattle and sheep; and the right of every such owner to use and consume the water for irrigating such land, and for the purposes of any manufactory situate thereon, provided that he does not thereby cause material injury to other like owners.

Explanation.—A natural stream is a stream, whether permanent or intermittent, tidal or tideless, on the surface of land or underground, which flows by the operation of nature only and in a natural and known course.

CHAPTER II.

The Imposition, Acquisition and Transfer of Easements.

Who may impose easements.

8. An easement may be imposed by any one in the circumstances, and to the extent, in and to which he may transfer his interest in the heritage on which the liability is to be imposed.

Illustrations.

(*a*) A is tenant of B's land under a lease for an unexpired term of twenty years, and has power to transfer his interest under the lease. A may impose an easement on the land to continue during the time that the lease exists or for any shorter period.

(*b*) A is tenant for his life of certain land with remainder to B absolutely. A cannot, unless with B's consent, impose an easement thereon which will continue after the determination of his life-interest.

(*c*) A, B and C are co-owners of certain land. A cannot, without the consent of B and C, impose an easement on the land or on any part thereof.

(*d*) A and B are lessees of the same lessor, A of a field X for a term of five years, and B of a field Y for a term of ten years. A's interest under his lease is transferable; B's is not. A may impose on X, in favour of B, a right of way terminable with A's lease.

Servient owners.

9. Subject to the provisions of section 8, a servient owner may impose on the servient heritage any easement that does not lessen the utility of the existing easement. But he cannot, without the consent of the dominant owner, impose an easement on the servient heritage which would lessen such utility.

When the person so entitled to set out the way refuses or neglects to do so, the dominant owner may set it out.

Acquisition by prescription.

15. Where the access and use of light or air, to and for any building have been peaceably enjoyed therewith, as an easement, without interruption, and for twenty years,

and where support from one person's land, or things affixed thereto, has been peaceably received by another person's land subjected to artificial pressure, or by things affixed thereto, as an easement, without interruption, and for twenty years,

and where a right of way or any other easement has been peaceably and openly enjoyed by any person claiming title thereto, as an easement, and as of right, without interruption, and for twenty years,

the right to such access and use of light or air, support or other easement shall be absolute.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

Explanation I.—Nothing is an enjoyment within the meaning of this section when it has been had in pursuance of an agreement with the owner or occupier of the property over which the right is claimed, and it is apparent from the agreement that such right has not been granted as an easement, or, if granted as an easement, that it has been granted for a limited period, or subject to a condition on the fulfilment of which it is to cease.

Explanation II.—Nothing is an interruption within the meaning of this section, unless where there is an actual cessation of the enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorizing the same to be made.

Explanation III.—Suspension of enjoyment in pursuance of a contract between the dominant and servient owners is not an interruption within the meaning of this section.

Explanation IV.—In the case of an easement to pollute water, the said period of twenty years begins when the pollution first perjudices preceptibly the servient heritage.

When the property over which a right is claimed under this section belongs to Government, this section shall be read as if for the words "twenty years" the words "sixty years" were substituted.

Illustrations.

(*a*) A suit is brought in 1883 for obstructing a right of way. The defendant admits the obstruction, but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him claiming title thereto as an easement and as of right, without interruption, from 1st January, 1862, to 1st January, 1882. The plaintiff is entitled to judgment.

(*b*) In a like suit, the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that for a year of that time the plaintiff was entitled to possession of the servient heritage as lessee thereof and enjoyed the right as such lessee. The suit shall be dismissed, for the right of way has not been enjoyed "as an easement" for twenty years.

(*c*) In a like suit, the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff on one occasion during the twenty years had admitted that the user was not of right and asked his leave to enjoy the right. The suit shall be dismissed, for the right of way has not been enjoyed "as of right" for twenty years.

Exclusion in favour of reversioner of servient heritage.

16. Provided that, when any land upon, over or from which any easement has been enjoyed or derived has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest

or term shall be excluded in the computation of the said last-mentioned period of twenty years, in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land.

Illustration.

A sues for a declaration that he is entitled to a right of way over B's land. A proves that he has enjoyed the right for twenty-five years, but B shows that during ten of these years C had a life-interest in the land, that on C's death B became entitled to the land, and that within two years after C's death he contested A's claim to the right. The suit must be dismissed, as A, with reference to the provisions of this section, has only proved enjoyment for fifteen years.

Rights which cannot be acquired by prescription.

17. Easements acquired under section 15 are said to be acquired by prescription, and are called prescriptive rights.

None of the following rights can be so acquired:—

(*a*) a right which would tend to the total destruction of the subject of the right, or the property on which, if the acquisition were made, liability would be imposed;

(*b*) a right to the free passage of light or air to an open space of ground;

(*c*) a right to surface-water not flowing in a stream and not permanently collected in a pool, tank or otherwise;

(*d*) a right to underground water not passing in a defined channel.

Customary easements.

18. An easement may be acquired in virtue of a local custom. Such easements are called customary easements.

Illustrations.

(*a*) By the custom of a certain village, every cultivator of village land is entitled, as such, to graze his cattle on the common pasture. A, having become the tenant of a plot of uncultivated land in the village, breaks up and cultivates that plot. He thereby acquires an easement to graze his cattle in accordance with the custom.

(*b*) By the custom of a certain town, no owner or occupier of a house can open a new window therein so as substantially to invade his neighbour's privacy. A builds a house in the town near B's house. A thereupon acquires an easement that B shall not open new windows in his house so as to command a view of the portions of A's house which are ordinarily excluded from observation, and B acquires a like easement with respect to A's house.

Transfer of dominant heritage passes easement.

19. Where the dominant heritage is transferred or devolves, by act of parties or by operation of law, the transfer or devolution shall, unless a contrary intention appears, be deemed to pass the easement to the person in whose favour the transfer or devolution takes place.

Illustrations.

A has certain land to which a right of way is annexed. A lets the land to B for twenty years. The right of way vests in B and his legal representative so long as the lease continues.

CHAPTER III.

THE INCIDENTS OF EASEMENTS.

Rules controlled by contract or title.

20. The rules contained in this chapter are controlled by any contract between the dominant and servient owners relating to the servient heritage, and by the provisions of the instrument or decree, if any, by which the easement referred to was imposed.

And, when any incident of any customary easement is inconsistent with such rules, nothing in this chapter shall affect such incident.

Incidents of customary easements.

Bar to use unconnected with enjoyment.

21. An easement must not be used for any purpose not connected with the enjoyment of the dominant heritage.

Illustrations.

(*a*) A, as owner of a farm Y, has a right of way over B's land to Y. Lying beyond Y, A has another farm Z, the beneficial enjoyment of which is not necessary for the beneficial enjoyment of Y. He must not use the easement for the purpose of passing to and from Z.

(*b*) A, as owner of a certain house, has a right of way to and from it. For the purpose of passing to and from the house, the right may be used, not only by A, but by the members of his family, his guests, lodgers, servants, workmen, visitors and customers; for this is a purpose connected with the enjoyment of the dominant heritage. So, if A lets the house, he may use the right of way for the purpose of collecting the rent and seeing that the house is kept in repair.

22. The dominant owner must exercise his right in the mode which is least onerous to the servient owner; and when the exercise of an easement can without detriment to the dominant owner be confined to a determinate part of the servient heritage, such exercise shall, at the request of the servient owner, be so confined.

Exercise of easement.

Confinement of exercise of easement.

Illustrations.

(*a*) A has a right of way over B's fields; A must enter the way at either end, and not at any intermediate point.

(*b*) A has a right annexed to his house to cut thatching grass in the B's swamp. A, when exercising his easement, must cut the grass so that the plants may not be destroyed.

23. Subject to the provisions of section 22, the dominant owner may, from time to time, alter the mode and place of enjoying the easement, provided that he does not thereby impose any additional burden on the servient heritage.

Right to alter mode of enjoyment.

Exception.—The dominant owner of a right of way cannot vary his line of passage at pleasure, even though he does not thereby impose any additional burden on the servient heritage.

Illustrations.

(*a*) A, the owner of a saw-mill, has a right to a flow of water sufficient to work the mill. He may convert the saw-mill into a corn mill, provided that it can be worked by the same amount of water.

(*b*) A has a right to discharge on B's land the rain-water from the eaves of A's house. This does not entitle A to advance his eaves if, by so doing, he imposes a greater burden on B's land.

(*c*) A, as the owner of a paper-mill, acquires a right to pollute a stream by pouring in the refuse liquor produced by making in the mill paper from rags. He may pollute the stream by pouring in similar liquor produced by making in the mill paper by a new process from bamboos, provided that he does not substantially increase the amount, or injuriously change the nature, of the pollution.

(*d*) A, a riparian owner, acquires as against the lower riparian owners, a prescriptive right to pollute a stream by throwing sawdust into it. This does not entitle A to pollute the stream by discharging into it poisonous liquor.

24. The dominant owner is entitled, as against the servient owner, to do all acts necessary to secure the full enjoyment of the easement; but such acts must be done at such time and in such manner as, without detriment to the dominant owner, to cause the servient owner as little inconvenience as possible; and the dominant

Right to do acts to secure enjoyment.

owner must repair, as far as practicable, the damage (if any) caused by the act to the servient heritage.

Accessory rights.

Rights to do acts necessary to secure the full enjoyment of an easement are called accessory rights.

Illustrations.

(*a*) A has an easement to lay pipes in B's land to convey water to A's cistern. A may enter and dig the land in order to mend the pipes, but he must restore the surface to its original state.

(*b*) A has an easement of a drain through B's land. The sewer with which the drain communicates is altered. A may enter upon B's land and alter the drain, to adopt it to the new sewer, provided that he does not thereby impose any additional burden on B's land.

(*c*) A, as owner of a certain house, has a right of way over B's land. The way is out of repair, or a tree is blown down and falls across it. A may enter on B's land and repair the way or remove the tree from it.

(*d*) A, as owner of a certain field, has a right of way over B's land. B renders the way impossible. A may deviate from the way and pass over the adjoining land of B, provided that the deviation is reasonable.

(*e*) A, as owner of a certain house, has a right of way over B's field. A may remove rocks to make the way.

(*f*) A has an easement of support from B's wall. The wall gives way. A may enter upon B's land and repair the wall.

(*g*) A has an easement to have his land flooded by means of a dam in B's stream. The dam is half swept away by an inundation. A may enter upon B's land and repair the dam.

25. The expenses incurred in constructing works or making repairs, or doing any other act necessary for the use or preservation of an easement, must be defrayed by the dominant owner.

Liability for expenses necessary for preservation of easement.

26. Where an easement is enjoyed by means of an artificial work, the dominant owner is liable to make compensation for any damage to the servient heritage arising from the want of repair of such work.

Liability for damage from want of repair.

27. The servient owner is not bound to do anything for the benefit of the dominant heritage, and he is entitled, as against the dominant owner, to use the the servient heritage in any way consistent with the enjoyment of the easement; but he must not do any act tending to restrict the easement or to render its exercise less convenient.

Servient owner not bound to do anything.

Illustrations.

(*a*) A, as owner of a house, has a right to lead water and send sewage through B's land. B is not bound as servient owner to clear the watercourse or scour the sewer.

(*b*) A grants a right of way through his land to B as owner of a field. A may feed his cattle on grass growing on the way, provided that B's right of way is not thereby obstructed; but he must not build a wall at the end of his land so as to prevent B from going beyond it, nor must he narrow the way so as to render the exercise of the right less easy than it was at the date of the grant.

(*c*) A, in respect of his house, is entitled to an easement of support from B's wall. B is not bound as servient owner to keep the wall standing and in repair. But he must not pull down or weaken the wall so as to make it incapable of rendering the necessary support.

(*d*) A, in respect of his mill, is entitled to a watercourse through B's land. B must not drive stakes so as to obstruct the watercourse.

(*e*) A, in respect of his house, is entitled to a certain quantity of light passing over B's land. B must not plant trees so as to obstruct the passage to A's windows of that quantity of light.

Extent of easements.

28. With respect to the extent of easements and the mode of their enjoyment, the following provisions shall take effect:—

Easement of necessity.

An easement of necessity is co-extensive with the necessity as it existed when the easement was imposed.

The extent of any other easement and the mode of its enjoyment must be fixed with reference to the probable intention of the parties, and the purpose for which the right was imposed or acquired.

Other easements.

In the absence of evidence as to such intention and purpose

Right of way.

(*a*) a right of way of any one kind does not include a right of way of any other kind:

Right to light or air acquired by grant

(*b*) the extent of a right to the passage of light or air to a certain window, door or other opening, imposed by a testamentary or non-testamentary instrument, is the quantity of light or air that entered the opening at the time the testator died or the non-testamentary instrument was made:

Prescriptive right to light or air.

(*c*) the extent of a prescriptive right to the passage of light or air to a certain window, door or other opening is that quantity of light or air which was reasonably sufficient, coming through that opening, for the convenient and comfortable use and enjoyment of the house and its beneficial employment as it was enjoyed at the commencement of the prescriptive period:

Prescriptive right to pollute air and water.

(*d*) the extent of a prescriptive right to pollute air or water is the extent of the pollution at the commencement of the period of user on completion of which the right arose: and

Other prescriptive rights.

(*e*) the extent of every other prescriptive right and the mode of its enjoyment must be determined by the accustomed user of the right.

Increase of easemen

29. The dominant owner cannot, by merely altering or adding to the dominant heritage, substantially increase an easement.

Where an easement has been granted or bequeathed so that its extent shall be proportionate to the extent of the dominant heritage, if the dominant heritage is increased by alluvion, the easement is proportionately increased, and if the dominant heritage is diminished by diluvion, the easement is proportionately diminished.

Save as aforesaid, no easement is affected by any change in the extent of the dominant or the servient heritage.

Illustrations.

(*a*) A, the owner of a mill, has acquired a prescriptive right to divert to his mill part of the water of a stream. A alters the machinery of his mill. He cannot thereby increase his right to divert water.

(*b*) A has acquired an easement to pollute a stream by carrying on a manufacture on its banks by which a certain quantity of foul matter is discharged into it. A extends his works and thereby increases the quantity discharged. He is responsible to the lower riparian owners for injury done by such increase.

(*c*) A, as the owner of a farm, has a right to take, for the purpose of manuring his farm, leaves which have fallen from the trees on B's land. A buys a field and unites it to his farm. A is not thereby entitled to take leaves to manure this field.

Partition of dominant heritage.

30. Where a dominant heritage is divided between two or more persons, the easement becomes annexed to each of the shares, but not so as to increase substantially the burden of the servient heritage: provided that such annexation is consistent with the terms of the instrument, decree or revenue proceeding (if any) under which the division was made, and, in the case of prescriptive rights, with the user during the prescriptive period.

Illustrations.

(*a*) A house to which a right of way by a particular path is annexed is divided into two parts, one of which is granted to A, the other to B. Each is entitled, in respect of his part, to a right of way by the same path.

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(b) where any permanent alteration is made in the dominant heritage of such a nature as to show that the dominant owner intended to cease to enjoy the easement in future.

Explanation II.—Mere non-user of an easement is not an implied release within the meaning of this section.

Illustrations.

(a) A, B and C are co-owners of a house to which an easement is annexed. A, without the consent of B and C, releases the easement. This release is effectual only as against A and his legal representative.

(b) A grants B an easement over A's land for the beneficial enjoyment of his house. B assigns the house to C, B then purports to release the easement. The release is ineffectual.

(c) A, having the right to discharge his eavesdroppings into B's yard, expressly authorizes B to build over this yard to a height which will interfere with the discharge. B builds accordingly. A's easement is extinguished to the extent of the interference.

(d) A having an easement of light to a window, builds up that window with bricks and mortar so as to manifest an intention to abandon the easement permanently. The easement is impliedly released.

(e) A, having a projecting roof by means of which he enjoys an easement to discharge eavesdroppings on B's land, permanently alters the roof, so as to direct the rain-water into a different channel, and discharge it on C's land. The easement is impliedly released.

Extinction by revocation.

39. An easement is extinguished when the servient owner, in exercise of a power reserved in this behalf, revokes the easement.

Extinction on expiration of limited period or happening of dissolving condition.

40. An easement is extinguished where it has been imposed for a limited period, or acquired on condition that it shall become void on the performance or non-performance of a specified act, and the period expires or the condition is fulfilled.

Extinction on termination of necessity.

41. An easement of necessity is extinguished when the necessity comes to an end.

Illustration.

A grants B a field inaccessible except by passing over A's adjoining land. B afterwards purchases a part of that land over which he can pass to his field. The right of way over A's land which B had acquired is extinguished.

Extinction of useless easement.

42. An easement is extinguished when it becomes incapable of being at any time and under any circumstances beneficial to the dominant owner.

Extinction by permanent change in dominant heritage.

43. Where, by any permanent change in the dominant heritage, the burden on the servient heritage is materially increased and cannot be reduced by the servient owner without interfering with the lawful enjoyment of the easement, the easement is extinguished, unless—

(a) it was intended for the beneficial enjoyment of the dominant heritage, to whatever extent the easement should be used; or

(b) the injury caused to the servient owner by the change is so slight that no reasonable person would complain of it; or

(c) the easement is an easement of necessity.

Nothing in this section shall be deemed to apply to an easement entitling the dominant owner to support of the dominant heritage.

Extinction on permanent alteration of servient heritage by superior force.

44. An easement is extinguished where the servient heritage is by superior force so permanently altered that the dominant owner can no longer enjoy such easement:

Provided that, where a way of necessity is destroyed by superior force, the dominant owner has a right to another way over the servient heritage; and the provisions of section 14 apply to such way.

Illustrations.

(*a*) A grants to B, as the owner of a certain house, a right to fish in a river running through A's land. The river changes its course permanently and runs through C's land. B's easement is extinguished.

(*b*) Access to a path over which A has a right of way is permanently cut off by an earthquake. A's right is extinguished.

Extinction by destruction of either heritage.

45. An easement is extinguished when either the dominant or the servient heritage is completely destroyed.

Illustration.

A has a right of way over a strip of land between a cliff and the sea, which forms the whole servient heritage. The strip is completely submerged and washed away. The easement is extinguished.

Extinction by unity of ownership.

46. An easement is extinguished when the same person becomes entitled to the absolute ownership of the whole of the dominant and servient heritages.

Illustrations.

(*a*) A, as the owner of a house, has a right of way over B's field. A mortgages his house, and B mortgages his field to C. Then C forecloses both mortgages and becomes thereby absolute owner of both house and field. The right of way is extinguished.

(*b*) The dominant owner acquires only part of the servient heritage: the easement is not extinguished, except in the case illustrated in section 41.

(*c*) The servient owner acquires the dominant heritage in connection with a third person: the easement is not extinguished.

(*d*) The separate owners of two separate dominant heritages jointly acquire the heritage which is servient to the two separate heritages: the easements are not extinguished.

(*e*) The joint owners of the dominant heritage jointly acquire the servient heritage: the easement is extinguished.

(*f*) A single right of way exists over two servient heritages for the beneficial enjoyment of a single dominant heritage. The dominant owner acquires one only of the servient heritages. The easement is not extinguished.

(*g*) A has a right of way over B's road. B dedicates the road to the public. A's right of way is not extinguished.

Extinction by non-enjoyment.

47. A continuous easement is extinguished when it totally ceases to be enjoyed as such for an unbroken period of twenty years.

A discontinuous easement is extinguished when, for a like period, it has not been enjoyed as such.

Such period shall be reckoned, in the case of a continuous easement, from the day on which its enjoyment was obstructed by the servient owner; or rendered impossible by the dominant owner; and, in the case of a discontinuous easement, from the day on which it was last enjoyed by any person as dominant owner:

Provided that if, in the case of a discontinuous easement, the dominant owner, within such period, registers, under the Mysore Registration Regulation, 1902, a declaration of his intention to retain such easement, it shall not be extinguished until a period of twenty years has elapsed from the date of the registration.

Where an easement can be legally enjoyed only at a certain place, or at certain times, or between certain hours, or for a particular purpose, its enjoyment during the said period at another place, or at other times, or between other hours, or for another purpose, does not prevent its extinction under this section

The circumstance that, during the said period, no one was in possession of the servient heritage, or that the easement could not be enjoyed, or that a right accessory thereto was enjoyed, or that the dominant owner was not aware of its existence, or that he enjoyed it in ignorance of his right to do so, does not prevent its extinction under this section.

An easement is not extinguished under this section—

(*a*) where the cessation is in pursuance of a contract between the dominant and servient owners;

(*b*) where the dominant heritage is held in co-ownership, and one of the co-owners enjoys the easement within the said period; or

(*c*) where the easement is a necessary easement.

Where several heritages are respectively subject to rights of way for the benefit of a single heritage, and the ways are continuous, such rights shall, for the purposes of this section, be deemed to be a single easement.

Illustration.

A has, as annexed to his house, rights of way from the high road thither over the heritages X and Z and the intervening heritage Y. Before the twenty years expire, A exercises his right of way over X. His rights of way over Y and Z are not extinguished.

Extinction of accessory rights.

48. When an easement is extinguished, the rights (if any) accessory thereto are also extinguished.

Illustration.

A has an easement to draw water from B's well. As accessory thereto, he has a right of way over B's land to and from the well. The easement to draw water is extinguished under section 47. The right of way is also extinguished.

Suspension of easement.

49. An easement is suspended when the dominant owner becomes entitled to possession of the servient heritage for a limited interest therein, or when the servient owner becomes entitled to possession of the dominant heritage for a limited interest therein.

Servient owner not entitled to require continuance.

50. The servient owner has no right to require that an easement be continued and, notwithstanding the provisions of section 26 he is not entitled to compensation for damage caused to the servient heritage in consequence of the extinguishment or suspension of the easement, if the dominant owner has given to the servient owner such notice as will enable him, without unreasonable expense to protect the servient heritage from such damage.

Compensation for damage caused by extinguishment.

Where such notice has not been given, the servient owner is entitled to compensation for damage caused to the servient heritage in consequence of such extinguishment or suspension

Illustration.

A, in exercise of an easement, diverts to his canal the water of B's stream. The diversion continues for many years, and during that time the bed of the stream partly fills up. A then abandons his easement, and restores the stream to its ancient course. B's land is consequently flooded. B sues A for compensation for the damage caused by the flooding. It is proved that A gave B a month's notice of his intention to abandon the easement and that such notice was sufficient to enable B, without unreasonable expense, to have prevented the damage. The suit must be dismissed.

Revival of easements.

51. An easement extinguished under section 45 revives (*a*) when the destroyed heritage is, before twenty years have expired, restored by the deposit of alluvion; (*b*) when the destroyed heritage is a servient building and before twenty years have expired such building is rebuilt upon the same site; and (*c*) when the destroyed heritage is a dominant building and before twenty years have expired such building is rebuilt upon the same site and in such a manner as not to impose a greater burden on the servient heritage.

An easement extinguished under section 46 revives when the grant or bequest by which the unity of ownership was produced is set aside by the decree of a competent Court. A necessary easement extinguished under the same section revives when the unity of ownership ceases from any other cause.

A suspended easement revives if the cause of suspension is removed before the right is extinguished under section 47.

Illustration.

A, as the absolute owner of field Y, has a right of way thither over B's field Z. A obtains from B a lease of Z for twenty years. The easement is suspended so long as A remains lessee of Z. But when A assigns the lease to C, or surrenders it to B, the right of way revives.

CHAPTER VI.

LICENSES.

"License" defined.

52. Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immoveable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license.

Who may grant license.

53. A license may be granted by any one in the circumstances and to the extent in and to which he may transfer his interests in the property affected by the license.

Grant may be express or implied.

54. The grant of a license may be express or implied from the conduct of the grantor, and an agreement which purports to create an easement, but is ineffectual for that purpose, may operate to create a license.

Accessory licenses annexed by law.

55. All licenses necessary for the enjoyment of any interest, or the exercise of any right, are implied in the constitution of such interest or right. Such licenses are called accessory licenses.

Illustration.

A sells the trees growing on his land to B. B is entitled to go on the land and take away the trees.

License when transferable.

56. Unless a different intention is expressed or necessarily implied, a license to attend a place of public entertainment may be transferred by the licensee; but, save as aforesaid, a license cannot be transferred by the licensee or exercised by his servants or agents.

Illustrations.

(*a*) A grants B a right to walk over A's field whenever he pleases. The right is not annexed to any immoveable property of B. The right cannot be transferred.

(*b*) The Government grant B a license to erect and use temporary grain-sheds on Government land. In the absence of express provision to the contrary, B's servants may enter on the land for the purpose of erecting sheds, erect the same, deposit grain therein and remove grain therefrom.

Grantor's duty to disclose defects.

57. The grantor of a license is bound to disclose to the licensee any defect in the property affected by the license, likely to be dangerous to the person or property of the licensee, of which the grantor is, and the licensee is not, aware.

Grantor's duty not to render property unsafe.

58. The grantor of a license is bound not to do anything likely to render the property affected by the license dangerous to the person or property of the licensee.

59. When the grantor of the license transfers the property affected thereby, the transferee is not as such bound by the license.

Grantor's transferee not bound by license.

License when revocable.

60. A license may be revoked by the grantor, unless—

(*a*) it is coupled with a transfer of property and such transfer is in force:

(*b*) the licensee, acting upon the license, has executed a work of a permanent character and incurred expenses in the execution.

Revocation express or implied.

61. The revocation of a license may be express or implied.

Illustrations.

(*a*) A, the owner of a field, grants a license to B to use a path across it. A, with intent to revoke the license, locks a gate across the path. The license is revoked.

(*b*) A, the owner of a field, grants a license to B to stack hay on the field. A lets or sells the field to C. The license is revoked.

License when deemed revoked.

62. A license is deemed to be revoked—

(*a*) when, from a cause proceeding the grant of it, the grantor ceases to have any interest in the property affected by the license:

(*b*) when the licensee releases it, expressly or impliedly, to the grantor, or his representative:

(*c*) where it has been granted for a limited period, or acquired on condition that it shall become void on the performance or non-performance of a specified act, and the period expires or the condition is fulfilled:

(*d*) where the property affected by the license is destroyed or by superior force so permanently altered that the licensee can no longer exercise his right:

(*e*) where the licensee becomes entitled to the absolute ownership of the property affected by the license:

(*f*) where the license is granted for a specified purpose and the purpose is attained, or abandoned, or becomes impracticable:

(*g*) where the license is granted to the licensee as holding a particular office, employment or character, and such office, employment or character ceases to exist:

(*h*) where the license totally ceases to be used as such for an unbroken period of twenty years, and such cessation is not in pursuance of a contract between the grantor and the licensee:

(*i*) in the case of an accessory license, when the interest or right to which it is accessory ceases to exist.

Licensee's rights on revocation.

63. Where a license is revoked, the licensee is entitled to a reasonable time to leave the property affected thereby and to remove any goods which he has been allowed to place on such property

Licensee's rights on eviction.

64 Where a license has been granted for a consideration, and the licensee, without any fault of his own, is evicted by the grantor before he has fully enjoyed, under the license, the right for which he contracted, he is entitled to recover compensation from the grantor.

STATEMENT OF OBJECTS AND REASONS.

The question of introducing the Indian Easements Act, 1882, into the State is being mooted in the Representative Assembly for the last few years. The Act has been in force in the neighbouring Provinces of Madras and Coorg since 1882, and Bombay since 1891. It is considered advisable to assimilate the law in the State to that of the neighbouring Provinces. Further even now the principles of the Act are to a great extent adopted by the courts in deciding questions of easements. The Bill is based mainly on the British Indian Act.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

GEN... RIAT
JUDICIAL
15 FEB 1917

THE ~~INDIAN~~ EASEMENTS ~~ACT, 1882,~~

~~(ACT V OF 1882,)~~

~~AS AMENDED BY THE REPEALING AND AMENDING ACT, 1891 (XII OF 1891).~~

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GEN. SECRETARIAT
JUDICIAL
15 FEB 1917

~~ACT No. V OF 1882.~~[1]

(~~As amended by Act XII of 1891.~~)

[~~17th February, 1882.~~]

An ~~Act~~ Bill to define and amend the law relating to Easements and Licenses.

WHEREAS it is expedient to define and amend the law relating to Easements and Licenses; ~~It is hereby enacted~~ as follows:— Preamble. His Highness the Maharaja is pleased to enact

PRELIMINARY.

1. This ~~Act~~ Regulation may be called the ~~Indian~~ Mysore Easements Regulation ~~Act, 1882~~: Short title.

[2] It extends to the ~~territories respectively administered by the Governor of Madras in Council and the Chief Commissioners of the Central Provinces and Coorg~~ whole of Mysore; Local extent.

and it shall come into force on the first day of ~~July, 1882~~. Commencement.

2. Nothing herein contained shall be deemed to affect any law not hereby expressly repealed; or to derogate from— Savings.

(*a*) any right of the Government to regulate the collection, retention and distribution of the water of rivers and streams flowing in natural channels, and of natural lakes and ponds, or of the water flowing, collected, retained or distributed in or by any channel or

[1] For Statement of Objects and Reasons, *see* Gazette of India, 1880, Pt. V, page 494; for Report of Select Committee, *see ibid*, 1881, Pt. V, p. 1021; and for Proceedings and Debates in Council relating to the Bill, *see ibid*, 1881, Supplement, pp. 687, 766; and *ibid*, 1882, Supplement, p. 172.

The Act has been extended under s. 5 of the Scheduled Districts Act, 1874 (XIV of 1874), General Acts, Vol. II, to the Scheduled District of Ajmer-Merwara, *see* Gazette of India, 1897, Pt. II, p. 1415.

[2] The Act was extended to the territories respectively administered by the Governor of Bombay in Council and the Lieutenant-Governor of the N.-W. P. and Chief Commissioner of Oudh by Act VIII of 1891, printed, Bombay Code, Ed. 1894, Vol. I.

or other work constructed at the public expense for irrigation;

(*b*) any customary or other right (not being a license) in or over immoveable property which the Government, the public or any person may possess irrespective of other immoveable property; or

(*c*) any right acquired, or arising out of a relation created, before this ~~Act~~ comes into force.

Repeal of Act XV of 1877, sections 26 and 27.

3. Sections 26 and 27 of the [1] ~~Indian~~ Limitation ~~Act, 1877~~, and the definition of "easement" contained in that ~~Act~~, are repealed ~~in the territories to which this Act extends~~. All references in any ~~Act~~ or Regulation to the said sections, or to sections 27 and 28 of Act No. ~~IX~~ of 1871,[2] shall, ~~in such territories~~, be read as made to sections fifteen and sixteen of this ~~Act~~.

CHAPTER I.

OF EASEMENTS GENERALLY.

"Easement" defined.

4. An easement is a right which the owner or occupier of certain land possesses, as such, for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon, or in respect of, certain other land not his own.

Dominant and servient heritages and owners.

The land for the beneficial enjoyment of which the right exists is called the dominant heritage, and the owner or occupier thereof the dominant owner; the land on which the liability is imposed is called the servient heritage, and the owner or occupier thereof the servient owner.

Explanation.—In the first and second clauses of this section, the expression "land" includes also things permanently attached to the earth: the expression "beneficial enjoyment" includes also possible convenience, remote advantage, and even a mere amenity; and the expression "to do something" includes

[1] For Act XV of 1877, *see* the revised edition, as modified up to 31st December, 1900.

[2] Act IX of 1871 was repealed by Act XV of 1877.

includes removal and appropriation by the dominant owner for the beneficial enjoyment of the dominant heritage, of any part of the soil of the servient heritage or anything growing or subsisting thereon.

Illustrations.

(*a*) A, as the owner of a certain house, has a right of way thither over his neighbour B's land for purposes connected with the beneficial enjoyment of the house. This is an easement.

(*b*) A, as the owner of a certain house, has the right to go on his neighbour B's land, and to take water for the purposes of his household out of a spring therein. This is an easement.

(*c*) A, as the owner of a certain house, has the right to conduct water from B's stream to supply the fountains in the garden attached to the house. This is an easement.

(*d*) A, as the owner of a certain house and farm, has the right to graze a certain number of his own cattle on B's field, or to take for the purpose of being used in the house, by himself, his family, guests, lodgers and servants, water, or fish out of C's tank, or timber out of D's wood, or to use, for the purpose of manuring, his land, the leaves which have fallen from the trees on E's land. These are easements.

(*e*) A dedicates to the public the right to occupy the surface of certain land for the purpose of passing and re-passing. This right is not an easement.

(*f*) A is bound to cleanse a watercourse running through his land and keep it free from obstruction for the benefit of B, a lower riparian owner. This is not an easement.

Continuous and discontinuous, apparent and non-apparent, easements.

5. Easements are either continuous or discontinuous, apparent or non-apparent.

A continuous easement is one whose enjoyment is, or may be, continual without the act of man.

A discontinuous easement is one that needs the act of man for its enjoyment.

An apparent easement is one the existence of which is shown by some permanent sign which, upon careful inspection by a competent person, would be visible to him.

A non-apparent easement is one that has no such sign.

Illustrations.

(*a*) A right annexed to B's house to receive light by the windows without obstruction by his neighbour A. This is a continuous easement.

(*b*) A right

(*b*) A right of way annexed to A's house over B's land. This is a discontinuous easement.

(*c*) Rights annexed to A's land to lead water thither across B's land by an aqueduct and to draw off water thence by a drain. The drain would be discovered upon careful inspection by a person conversant with such matters. These are apparent easements.

(*d*) A right annexed to A's house to prevent B from building on his own land. This is an non-apparent easement.

Easement for limited time or on condition.

6. An easement may be permanent, or for a term of years or other limited period, or subject to periodical interruption, or exercisable only at a certain place, or at certain times, or between certain hours, or for a particular purpose, or on condition that it shall commence or become void or voidable on the happening of a specified event or the performance or non-performance of a specified act.

Easements restrictive of certain rights; Exclusive right to enjoy.

7. Easements are restrictions of one or other of the following rights (namely):—

(*a*) the exclusive right of every owner of immoveable property (subject to any law for the time being in force) to enjoy and dispose of the same and all products thereof and accessions thereto;

Rights to advantages arising from situation.

(*b*) the right of every owner of immoveable property (subject to any law for the time being in force) to enjoy without disturbance by another the natural advantages arising from its situation.

Illustrations of the Rights above referred to.

(*a*) The exclusive right of every owner of land in a town to build on such land, subject to any municipal law for the time being in force.

(*b*) The right of every owner of land that the air passing thereto shall not be unreasonably polluted by other persons.

(*c*) The right of every owner of a house that his physical comfort shall not be interfered with materially and unreasonably by noise or vibration caused by any other person.

(*d*) The right of every owner of land to so much light and air as pass vertically thereto.

(*e*) The right of every owner of land that such land, in its natural condition, shall have the support naturally rendered by the subjacent soil of another person.

Explanation.

Explanation.—Land is in its natural condition when it is not excavated and not subjected to artificial pressure; and the "subjacent and adjacent soil" mentioned in this illustration means such soil only as in its natural condition would support the dominant heritage in its natural condition.

(*f*) The right of every owner of land that, within his own limits, the water which naturally passes or percolates by, over or through his land shall not, before so passing or percolating, be unreasonably polluted by other persons.

(*g*) The right of every owner of land to collect and dispose within his own limits of all water under the land which does not pass in a defined channel and all water on its surface which does not pass in a defined channel.

(*h*) The right of every owner of land that the water of every natural stream which passes by, through or over his land in a defined natural channel shall be allowed by other persons to flow within such owner's limits without interruption and without material alteration in quantity, direction, force or temperature: the right of every owner of land abutting on a natural lake or pond into or out of which a natural stream flows, that the water of such lake or pond shall be allowed by other persons to remain within such owner's limits without material alteration in quantity or temperature.

(*i*) The right of every owner of upper land that water naturally rising in, or falling on, such land, and not passing in defined channels, shall be allowed by the owner of adjacent lower land to run naturally thereto.

(*j*) The right of every owner of land abutting on a natural stream, lake or pond to use and consume its water for drinking, household purposes and watering his cattle and sheep; and the right of every such owner to use and consume the water for irrigating such land, and for the purposes of any manufactory situate thereon, provided that he does not thereby cause material injury to other like owners.

Explanation.—A natural stream is a stream, whether permanent or intermittent, tidal or tideless, on the surface of land or underground, which flows by the operation of nature only and in a natural and known course.

CHAPTER II.

The Imposition, Acquisition and Transfer of Easements.

Who may impose easements.

8. An easement may be imposed by any one in the circumstances, and to the extent, in and to which he

he may transfer his interest in the heritage on which the liability is to be imposed.

Illustrations.

(*a*) A is tenant of B's land under a lease for an unexpired term of twenty years, and has power to transfer his interest under the lease. A may impose an easement on the land to continue during the time that the lease exists or for any shorter period.

(*b*) A is tenant for his life of certain land with remainder to B absolutely. A cannot, unless with B's consent, impose an easement thereon which will continue after the determination of his life-interest.

(*c*) A, B and C are co-owners of certain land. A cannot, without the consent of B and C, impose an easement on the land or on any part thereof.

(*d*) A and B are lessees of the same lessor, A of a field X for a term of five years, and B of a field Y for a term of ten years A's interest under his lease is transferable; B's is not. A may impose on X, in favour of B, a right of way terminable with A's lease.

Servient owners.

9. Subject to the provisions of section eight, a servient owner may impose on the servient heritage any easement that does not lessen the utility of the existing easement. But he cannot, without the consent of the dominant owner, impose an easement on the servient heritage which would lessen such utility.

Illustrations.

(*a*) A has, in respect of his mill, a right to the uninterrupted flow thereto, from sunrise to noon, of the water of B's stream. B may grant to C the right to divert the water of the stream from noon to sunset: provided that A's supply is not thereby diminished.

(*b*) A has, in respect of his house, a right of way over B's land. B may grant to C, as the owner of a neighbouring farm, the right to feed his cattle on the grass growing on the way: provided that A's right of way is not thereby obstructed.

Lessor and mortgagor.

10. Subject to the provisions of section eight, a lessor may impose, on the property leased, any easement that does not derogate from the rights of the lessee as such, and a mortgagor may impose, on the property mortgaged, any easement that does not render the

the security insufficient. But a lessor or mortgagor cannot, without the consent of the lessee or mortgagee, impose any other easement on such property, unless it be to take effect on the termination of the lease or the redemption of the mortgage.

Explanation.—A security is insufficient within the meaning of this section unless the value of the mortgaged property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the amount for the time being due on the mortgage.

Lessee.

11. No lessee or other person having a derivative interest may impose on the property held by him as such an easement to take effect after the expiration of his own interest, or in derogation of the right of the lessor or the superior proprietor.

Who may acquire easements.

12. An easement may be acquired by the owner of the immoveable property for the beneficial enjoyment of which the right is created, or, on his behalf, by any person in possession of the same.

One of two or more co-owners of immoveable property may, as such, with or without the consent of the other or others, acquire an easement for the beneficial enjoyment of such property.

No lessee of immoveable property can acquire, for the beneficial enjoyment of other immoveable property of his own, an easement in or over the property comprised in his lease.

Easements of necessity and *quasi*-easements.

13. Where one person transfers or bequeaths immoveable property to another,—

(*a*) if an easement in other immoveable property of the transferor or testator is necessary for enjoying the subject of the transfer or bequest, the transferee or legatee shall be entitled to such easement; or

(*b*) if such an easement is apparent and continuous and necessary for enjoying the said subject as it was enjoyed when the transfer or bequest took effect, the transferee or legatee shall, unless a different intention is expressed or necessarily implied, be entitled to such easement;

(*c*) if

(*c*) if an easement in the subject of the transfer or bequest is necessary for enjoying other immoveable property of the transferor or testator, the transferor or the legal representative of the testator shall be entitled to such easement; or

(*d*) if such an easement is apparent and continuous and necessary for enjoying the said property as it was enjoyed when the transfer or bequest took effect, the transferor, or the legal representative of the testator, shall, unless a different intention is expressed or necessarily implied, be entitled to such easement.

Where a partition is made of the joint property of several persons,—

(*e*) if an easement over the share of one of them is necessary for enjoying the share of another of them, the latter shall be entitled to such easement, or

(*f*) if such an easement is apparent and continuous and necessary for enjoying the share of the latter as it was enjoyed when the partition took effect, he shall, unless a different intention is expressed or necessarily implied, be entitled to such easement.

The easements mentioned in this section, clauses (*a*), (*c*) and (*e*), are called easements of necessity.

Where immoveable property passess by operation of law, the persons from and to whom it so passes are, for the purpose of this section, to be deemed, respectively, the transferor and transferee.

Illustrations.

(*a*) A sells B a field then used for agricultural purposes only. It is inaccessible except by passing over A's adjoining land or by trespassing on the land of a stranger. B is entitled to a right of way, for agricultural purposes only, over A's adjoining land to the field sold.

(*b*) A, the owner of two fields, sells one to B, and retains the other. The field retained was at the date of the sale used for agricultural purposes only and is inaccessible except by passing over the field sold to B. A is entitled to a right of way, for agricultural purposes only, over B's field to the field retained.

(*c*) A sells B a house with windows overlooking A's land which A retains. The light which passes over A's land to the windows

windows is necessary for enjoying the house as it was enjoyed when the sale took effect. B is entitled to the light, and A cannot afterwards obstruct it by building on his land.

(*d*) A sells B a house with windows overlooking A's land. The light passing over A's land to the windows is necessary for enjoying the house as it was enjoyed when the sale took effect. Afterwards A sells the land to C. Here C cannot obstruct the light by building on the land, for he takes it subject to the burdens to which it was subject in A's hands.

(*e*) A is the owner of a house and adjoining land. The house has windows overlooking the land. A simultaneously sells the house to B and the land to C. The light passing over the land is necessary for enjoying the house as it was enjoyed when the sale took effect. Here A impliedly grants B a right to the light, and C takes the land subject to the restriction that he may not build so as to obstruct such light.

(*f*) A is the owner of a house and adjoining land. The house has windows overlooking the land. A, retaining the house, sells the land to B, without expressly reserving any easement. The light passing over the land is necessary for enjoying the house as it was enjoyed when the sale took effect. A is entitled to the light, and B cannot build on the land so as to obstruct such light.

(*g*) A, the owner of a house, sells B a factory built on adjoining land. B is entitled, as against A, to pollute the air, when necessary, with smoke and vapours from the factory.

(*h*) A, the owner of two adjoining houses, Y and Z, sell Y to B, and retains Z. B is entitled to the benefit of all the gutters and drains common to the two houses and necessary for enjoying Y as it was enjoyed when the sale took effect, and A is entitled to the benefit of all the gutters and drains common to the two houses and necessary for enjoying Z as it was enjoyed when the sale took effect.

(*i*) A, the owner of two adjoining buildings, sells one to B, retaining the other. B is entitled to a right to lateral support from A's building, and A is entitled to a right to lateral support from B's building.

(*j*) A, the owner of two adjoining buildings, sells one to B and the other to C. C is entitled to lateral support from B's building, and B is entitled to lateral support from C's building.

(*k*) A grants lands to B for the purpose of building a house thereon. B is entitled to such amount of lateral and subjacent support from A's land as is necessary for the safety of the house.

(*l*) Under

(*l*) Under the Land Acquisition ~~Act, 1870~~,[1] a Railway Company compulsorily acquires a portion of B's land for the purpose of making a siding. The Company is entitled to such amount of lateral support from B's adjoining land as is essential for the safety of the siding.

(*m*) Owing to the partition of joint property, A becomes the owner of an upper room in a building, and B becomes the owner of the portion of the building immediately beneath it. A is entitled to such amount of vertical support from B's portion as is essential for the safety of the upper room.

(*n*) A lets a house and grounds to B for a particular business. B has no access to them other than by crossing A's land. B is entitled to a right of way over that land suitable to the business to be carried on by B in the house and grounds.

Direction of way of necessity.

14. When [2] [a right] to a way of necessity is created under section thirteen, the transferor, the legal representative of the testator, or the owner of the share over which the right is exercised, as the case may be, is entitled to set out the way; but it must be reasonably convenient for the dominant owner.

When the person so entitled to set out the way refuses or neglects to do so, the dominant owner may set it out.

Acquisition by prescription.

15. Where the access and use of light or air, to and for any building have been peaceably enjoyed therewith, as an easement, without interruption, and for twenty years,

and where support from one person's land, or things affixed thereto, has been peaceably received by another person's land subjected to artificial pressure, or by things affixed thereto, as an easement, without interruption, and for twenty years,

and where a right of way or any other easement has been peaceably and openly enjoyed by any person claiming title thereto, as an easement, and as of right, without interruption, and for twenty years,

the

[1] See now the Land Acquisition Act, 1894 (I of 1894), by which Act X of 1870 has been repealed.

[2] The words "a right" were substituted for the word "right" by the Repealing and Amending Act, 1891 (XII of 1891), Sch. II, Pt. I, General Acts, Vol. VI, Ed. 1898, p. 32.

the right to such access and use of light or air support or other easement shall be absolute.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

Explanation I.—Nothing is an enjoyment within the meaning of this section when it has been had in pursuance of an agreement with the owner or occupier of the property over which the right is claimed, and it is apparent from the agreement that such right has not been granted as an easement, or, if granted as an easement, that it has been granted for a limited period, or subject to a condition on the fulfilment of which it is to cease.

Explanation II.—Nothing is an interruption within the meaning of this section, unless where there is an actual cessation of the enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorizing the same to be made.

Explanation III.—Suspension of enjoyment in pursuance of a contract between the dominant and servient owners is not an interruption within the meaning of this section.

Explanation IV.—In the case of an easement to pollute water, the said period of twenty years begins when the pollution first perjudices preceptibly the servient heritage.

When the property over which a right is claimed under this section belongs to Government, this section shall be read as if for the words "twenty years" the words "sixty years" were substituted

Illustrations.

(*a*) A suit is brought in 1883 for obstructing a right of way. The defendant admits the obstruction, but denies the right of way. The plaintiff proves that the right was peaceably and openly

openly enjoyed by him claiming title thereto as an easement and as of right, without interruption, from 1st January, 1862, to 1st January, 1882. The plaintiff is entitled to judgment.

(*b*) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that for a year of that time the plaintiff was entitled to possession of the servient heritage as lessee thereof and enjoyed the right as such lessee. The suit shall be dismissed, for the right of way has not been enjoyed "as an easement" for twenty years.

(*c*) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff on one occasion during the twenty years had admitted that the user was not of right and asked his leave to enjoy the right. The suit shall be dismissed, for the right of way has not been enjoyed "as of right" for twenty years.

Exclusion in favour of reversioner of servient heritage.

16. Provided that, when any land upon, over or from which any easement has been enjoyed or derived has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the said last-mentioned period of twenty years, in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land.

Illustration.

A sues for a declaration that he is entitled to a right of way over B's land. A proves that he has enjoyed the right for twenty-five years, but B shows that during ten of these years C had a life-interest in the land, that on C's death B became entitled to the land, and that within two years after C's death he contested A's claim to the right. The suit must be dismissed, as A, with reference to the provisions of this section, as only proved enjoyment for fifteen years.

Rights which cannot be acquired by prescription.

17. Easements acquired under section fifteen are said to be acquired by prescription, and are called prescriptive rights.

None

None of the following rights can be so acquired:—

(*a*) a right which would tend to the total destruction of the subject of the right, or the property on which, if the acquisition were made, liability would be imposed;

(*b*) a right to the free passage of light or air to an open space of ground;

(*c*) a right to surface-water not flowing in a stream and not permanently collected in a pool, tank or otherwise;

(*d*) a right to underground water not passing in a defined channel.

Customary easements.

18. An easement may be acquired in virtue of a local custom. Such easements are called customary easements.

Illustrations.

(*a*) By the custom of a certain village every cultivator of village land is entitled, as such, to graze his cattle on the common pasture. A, having become the tenant of a plot of uncultivated land in the village, breaks up and cultivates that plot. He thereby acquires an easement to graze his cattle in accordance with the custom.

(*b*) By the custom of a certain town no owner or occupier of a house can open a new window therein so as substantially to invade his neighbour's privacy. A builds a house in the town near B's house. A thereupon acquires an easement that B shall not open new windows in his house so as to command a view of the portions of A's house which are ordinarily excluded from observation, and B acquires a like easement with respect to A's house.

Transfer of dominant heritage passes easement.

19. Where the dominant heritage is transferred or devolves, by act of parties or by operation of law, the transfer or devolution shall, unless a contrary intention appears, be deemed to pass the easement to the person in whose favour the transfer or devolution takes place.

Illustrations.

A has certain land to which a right of way is annexed. A lets the land to B for twenty years. The right of way vests in B and his legal representative so long as the lease continues.

CHAPTER III.

CHAPTER III.

THE INCIDENTS OF EASEMENTS.

Rules controlled by contract or title.

20. The rules contained in this chapter are controlled by any contract between the dominant and servient owners relating to the servient heritage, and by the provisions of the instrument or decree, if any, by which the easement referred to was imposed.

Incidents of customary easements.

And when any incident of any customary easement is inconsistent with such rules, nothing in this chapter shall affect such incident.

Bar to use unconnected with enjoyment.

21. An easement must not be used for any purpose not connected with the enjoyment of the dominant heritage.

Illustrations.

(*a*) A, as owner of a farm Y, has a right of way over B's land to Y. Lying beyond Y, A has another farm Z, the beneficial enjoyment of which is not necessary for the beneficial enjoyment of Y. He must not use the easement for the purpose of passing to and from Z.

(*b*) A, as owner of a certain house, has a right of way to and from it. For the purpose of passing to and from the house, the right may be used, not only by A, but by the members of his family, his guests, lodgers, servants, workmen, visitors and customers; for this is a purpose connected with the enjoyment of the dominant heritage. So, if A lets the house, he may use the right of way for the purpose of collecting the rent and seeing that the house is kept in repair.

Exercise of easement.

22. The dominant owner must exercise his right in the mode which is least onerous to the servient owner; and when the exercise of an easement can without detriment to the dominant owner be confined to a determinate part of the servient heritage, such exercise shall, at the request of the servient owner, be so confined.

Confinement of exercise of easement.

Illustrations.

(*a*) A has a right of way over B's fields. A must enter the way at either end, and not at any intermediate point.

(*b*) A has a right annexed to his house to cut thatching-grass in B's swamp. A, when exercising his easement, must cut the grass so that the plants may not be destroyed.

23. Subject

Right to alter mode of enjoyment.

23. Subject to the provisions of section twenty-two, the dominant owner may, from time to time, alter the mode and place of enjoying the easement, provided that he does not thereby impose any additional burden on the servient heritage.

Exception.—The dominant owner of a right of way cannot vary his line of passage at pleasure, even though he does not thereby impose any additional burden on the servient heritage.

Illustrations.

(*a*) A, the owner of a saw-mill, has a right to a flow of water sufficient to work the mill. He may convert the saw-mill into a corn-mill, provided that it can be worked by the same amount of water.

(*b*) A has a right to discharge on B's land the rain-water from the eaves of A's house. This does not entitle A to advance his eaves if, by so doing, he imposes a greater burden on B's land.

(*c*) A, as the owner of a paper-mill, acquires a right to pollute a stream by pouring in the refuse-liquor produced by making in the mill paper from rags. He may pollute the stream by pouring in similar liquor produced by making in the mill paper by a new process from bamboos, provided that he does not substantially increase the amount, or injuriously change the nature, of the pollution.

(*d*) A, riparian owner, acquires as against the lower riparian owners, a prescriptive right to pollute a stream by throwing sawdust into it. This does not entitle A to pollute the stream by discharging into it poisonous liquor.

Right to do acts to secure enjoyment.

24. The dominant owner is entitled, as against the servient owner, to do all acts necessary to secure the full enjoyment of the easement[1]; but such acts must be done at such time and in such manner as, without detriment to the dominant owner, to cause the servient owner as little inconvenience as possible; and the dominant owner must repair, as far as practicable, the damage (if any) caused by the act to the servient heritage.

Rights

[1] As to abatement of obstruction of easement, *see* s. 36, *infra*.

Accessory rights.

Rights to do acts necessary to secure the full enjoyment of an easement are called accessory rights.

Illustrations.

(*a*) A has an easement to lay pipes in B's land to convey water to A's cistern. A may enter and dig the land in order to mend the pipes, but he must restore the surface to its original state.

(*b*) A has an easement of a drain through B's land. The sewer with which the drain communicates is altered. A may enter upon B's land and alter the drain, to adapt it to the new sewer, provided that he does not thereby impose any additional burden on B's land.

(*c*) A, as owner of a certain house, has a right of way over B's land. The way is out of repair, or a tree is blown down and falls across it. A may enter on B's land and repair the way or remove the tree from it.

(*d*) A, as owner of a certain field, has a right of way over B's land. B renders the way impassable. A may deviate from the way and pass over the adjoining land of B, provided that the deviation is reasonable.

(*e*) A, as owner of a certain house, has a right of way over B's field. A may remove rocks to make the way.

(*f*) A has an easement of support from B's wall. The wall gives way. A may enter upon B's land and repair the wall.

(*g*) A has an easement to have his land flooded by means of a dam in B's stream. The dam is half swept away by an inundation. A may enter upon B's land and repair the dam.

Liability for expenses necessary for preservation of easement.

25. The expenses incurred in constructing works or making repairs, or doing any other act necessary for the use or preservation of an easement, must be defrayed by the dominant owner.

Liability for damage from want of repair.

26. Where an easement is enjoyed by means of an artificial work, the dominant owner is liable to make compensation for any damage to the servient heritage arising from the want of repair of such work.[1]

Servient owner not bound to do anything.

27. The servient owner is not bound to do anything for the benefit of the dominant heritage, and he is entitled, as against the dominant owner, to use the

[1] As to extinguishment or suspension of easement, *see* s. 50, *infra*.

the servient heritage in any way consistent with the enjoyment of the easement; but he must not do any act tending to restrict the easement or to render its exercise less convenient.

Illustrations.

(*a*) A, as owner of a house, has a right to lead water and send sewage through B's land. B is not bound as servient owner to clear the watercourse or scour the sewer.

(*b*) A grants a right of way through his land to B as owner of a field. A may feed his cattle on grass growing on the way, provided that B's right of way is not thereby obstructed; but he must not build a wall at the end of his land so as to prevent B from going beyond it, nor must he narrow the way so as to render the exercise of the right less easy than it was at the date of the grant.

(*c*) A, in respect of his house, is entitled to an easement of support from B's wall. B is not bound as servient owner to keep the wall standing and in repair. But he must not pull down or weaken the wall so as to make it incapable of rendering the necessary support.

(*d*) A, in respect of his mill, is entitled to a watercourse through B's land. B must not drive stakes so as to obstruct the watercourse.

(*e*) A, in respect of his house, is entitled to a certain quantity of light passing over B's land. B must not plant trees so as to obstruct the passage to A's windows of that quantity of light.

Extent of easements.

28. With respect to the extent of easements and the mode of their enjoyment, the following provisions shall take effect:—

Easement of necessity.

An easement of necessity is co-extensive with the necessity as it existed when the easement was imposed.

Other easements.

The extent of any other easement and the mode of its enjoyment must be fixed with reference to the probable intention of the parties, and the purpose for which the right was imposed or acquired.

In the absence of evidence as to such intention and purpose—

Right of way.

(*a*) a right of way of any one kind does not include a right of way of any other kind:

(*b*) the

was reasonably sufficient, coming through that opening, for the convenient and comfortable use and enjoyment of the house and its beneficial employment as it was enjoyed at the commencement of the prescriptive period.

Right to light or air acquired by grant.

(*b*) the extent of a right to the passage of light or air to a certain window, door or other opening, imposed by a testamentary or non-testamentary instrument, is the quantity of light or air that entered the opening at the time the testator died or the non-testamentary instrument was made:

Prescriptive right to light or air.

(*c*) the extent of a prescriptive right to the passage of light or air to a certain window, door or other opening is that quantity of light or air which has been accustomed to enter that opening during the whole of the prescriptive period irrespectively of the purposes for which it has been used:

Prescriptive right to pollute air and water.

(*d*) the extent of a prescriptive right to pollute air or water is the extent of the pollution at the commencement of the period of user on completion of which the right arose: and

Other prescriptive rights.

(*e*) the extent of every other prescriptive right and the mode of its enjoyment must be determined by the accustomed user of the right.

Increase of easement.

29. The dominant owner cannot, by merely altering or adding to the dominant heritage, substantially increase an easement.

Where an easement has been granted or bequeathed so that its extent shall be proportionate to the extent of the dominant heritage, if the dominant heritage is increased by alluvion, the easement is proportionately increased, and if the dominant heritage is diminished by diluvion, the easement is proportionately diminished.

Save as aforesaid, no easement is affected by any change in the extent of the dominant or the servient heritage.

Illustrations.

(*a*) A, the owner of a mill, has acquired a prescriptive right to divert to his mill part of the water of a stream. A alters the machinery of his mill. He cannot thereby increase his right to divert water.

(*b*) A has acquired an easement to pollute a stream by carrying on a manufacture on its banks by which a certain quantity of

of foul matter is discharged into it. A extends his works and thereby increases the quantity discharged. He is responsible to the lower riparian owners for injury done by such increase.

(*c*) A, as the owner of a farm, has a right to take, for the purpose of manuring his farm, leaves which have fallen from the trees on B's land. A buys a field and unites it to his farm. A is not thereby entitled to take leaves to manure this field.

Partition of dominant heritage.

30. Where a dominant heritage is divided between two or more persons, the easement becomes annexed to each of the shares, but not so as to increase substantially the burden of the servient heritage: provided that such annexation is consistent with the terms of the instrument, decree or revenue proceeding (if any) under which the division was made, and, in the case of prescriptive rights, with the user during the prescriptive period.

Illustrations.

(*a*) A house to which a right of way by a particular path is annexed is divided into two parts, one of which is granted to A, the other to B. Each is entitled, in respect of his part, to a right of way by the same path.

(*b*) A house to which is annexed the right of drawing water from a well to the extent of fifty buckets a day is divided into two distinct heritages, one of which is granted to A, the other to B. A and B are each entitled, in respect of his heritage, to draw from the well fifty buckets a day; but the amount drawn by both must not exceed fifty buckets a day.

(*c*) A, having in respect of his house an easement of light, divides the house into three distinct heritages. Each of these continues to have the right to have its windows unobstructed.

Obstruction in case of excessive user.

31. In the case of excessive user of an easement the servient owner may, without prejudice to any other remedies to which he may be entitled, obstruct the user, but only on the servient heritage: provided that such user cannot be obstructed when the obstruction would interfere with the lawful enjoyment of the easement.

Illustration.

A, having a right to the free passage over B's land of light to four windows six feet by four, increases their size and number. It is impossible to obstruct the passage of light to the new windows without also obstructing the passage of light to the ancient windows. B cannot obstruct the excessive user.

CHAPTER IV.

CHAPTER IV:

THE DISTURBANCE OF EASEMENTS.

Right to enjoyment without disturbance.

32. The owner or occupier of the dominant heritage is entitled to enjoy the easement without disturbance by any other person.

Illustration.

A, as owner of a house, has a right of way over B's land. C unlawfully enters on B's land, and obstructs A in his right of way. A may sue C for compensation, not for the entry, but for the obstruction.

Suit for disturbance of easement.

33. The owner of any interest in the dominant heritage, or the occupier of such heritage, may institute a suit for compensation for the disturbance of the easement or of any right accessory thereto: provided that the disturbance has actually caused substantial damage to the plaintiff.

Explanation I.—The doing of any act likely to injure the plaintiff by affecting the evidence of the easement, or by materially diminishing the value of the dominant heritage, is substantial damage within the meaning of this section and section thirty-four.

Explanation II.—Where the easement disturbed is a right to the free passage of light passing to the openings in a house, no damage is substantial within the meaning of this section, unless it falls within the first explanation, or interferes materially with the physical comfort of the plaintiff, or prevents him from carrying on ~~his accustomed business~~ in the dominant heritage as beneficially as he had done previous to instituting the suit.

the business if any which was carried on there at the commencement of the prescriptive period.

Explanation III.—Where the easement disturbed is a right to the free passage of air to the openings in a house, damage is substantial within the meaning of this section if it interferes materially with the physical comfort of the plaintiff, though it is not injurious to his health.

Illustrations.

(*a*) A places a permanent obstruction in a path over which B, as tenant of C's house, has a right of way. This is substantial

substantial damage to C, for it may affect the evidence of his reversionary right to the easement.

(*b*) A, as owner of a house, has a right to walk along one side of B's house. B builds a verandah overhanging the way about ten feet from the ground, and so as not to occasion any inconvenience to foot-passengers u sing the way. This is not substantial damage to A.

When cause of action arises for removal of support.

34. The removal of the means of support to which a dominant owner is entitled does not give rise to a right to recover compensation, unless and until substantial damage[1] is actually sustained.

Injunction to restrain disturbance.

35. Subject to the provisions of the Specific Relief Act, 1877,[2] sections 52 to 57 (both inclusive), an injunction may be granted to restrain the disturbance of an easement—

(*a*) if the easement is actually disturbed,—when compensation for such disturbance might be recovered under this chapter:

(*b*) if the disturbance is only threatened or intended,—when the act threatened or intended must necessarily, if performed, disturb the easement.

Abatement of obstruction of easement.

36. Notwithstanding the provisions of section twenty-four, the dominant owner cannot himself abate a wrongful obstruction of an easement.

CHAPTER V.

The Extinction, Suspension and Revival of Easements.

Extinction by dissolution of right of servient owner.

37. When, from a cause which preceded the imposition of an easement, the person by whom it was imposed ceases to have any right in the servient heritage, the easement is extinguished.

Exception.—Nothing in this section applies to an easement lawfully imposed by a mortgagor in accordance with section ten.

Illustrations.

[1] As to meaning of "substantial damage," *see* s. 33, expl. I, *supra.*

[2] For Act I of 1877, *see* General Acts, Vol. III, p. 5.

Illustrations.

(*a*) A transfers Sultánpur to B on condition that he does not marry C. B imposes an easement on Sultánpur. Then B marries C. B's interest in Sultánpur ends, and with it the easement is extinguished.

(*b*) A, in 1860, lets Sultánpur to B for thirty years from the date of the lease. B, in 1861, imposes an easement on the land in favour of C, who enjoys the easement peaceably and openly as an easement without interruption for twenty-nine years. B's interest in Sultánpur then ends, and with it C's easement.

(*c*) A and B, tenants of C, have permanent transferable interests in their respective holdings. A imposes on his holding an easement to draw water from a tank for the purpose of irrigating B's land. B enjoys the easement for twenty years. Then A's rent falls into arrear and his interest is sold. B's easement is extinguished.

(*d*) A mortgages Sultánpur to B, and lawfully imposes an easement on the land in favour of C in accordance with the provisions of section ten. The land is sold to D in satisfaction of the mortgage-debt. The easement is not thereby extinguished.

Extinction by release.

38. An easement is extinguished when the dominant owner releases it, expressly or impliedly, to the servient owner.

Such release can be made only in the circumstances and to the extent in and to which the dominant owner can alienate the dominant heritage.

An easement may be released as to part only of the servient heritage.

Explanation I.—An easement is impliedly released—

(*a*) where the dominant owner expressly authorizes an act of a permanent nature to be done on the servient heritage, the necessary consequence of which is to prevent his future enjoyment of the easement, and such act is done in pursuance of such authority;

(*b*) where any permanent alteration is made in the dominant heritage of such a nature as to show that the dominant owner intended to cease to enjoy the easement in future.

Explanation II.

Explanation II.—Mere non-user of an easement is not an implied release within the meaning of this section..

Illustrations.

(*a*) A, B and C are co-owners of a house to which an easement is annexed. A, without the consent of B and C, releases the easement. This release is effectual only as against A and his legal representative.

(*b*) A grants B an easement over A's land for the beneficial enjoyment of his house. B assigns the house to C. B then purports to release the easement. The release is ineffectual.

(*c*) A, having the right to discharge his eavesdroppings into B's yard, expressly authorizes B to build over this yard to a height which will interfere with the discharge. B builds accordingly. A's easement is extinguished to the extent of the interference.

(*d*) A having an easement of light to a window, builds up that window with bricks and mortar so as to manifest an intention to abandon the easement permanently. The easement is impliedly released.

(*e*) A, having a projecting roof by means of which he enjoys an easement to discharge eavesdroppings on B's land, permanently alters the roof, so as to direct the rain-water into a different channel and discharge it on C's land. The easement is impliedly released.

39. An easement is extinguished when the servient owner, in exercise of a power reserved in this behalf, revokes the easement.

Extinction on expiration of limited period or happening of dissolving condition.

40. An easement is extinguished where it has been imposed for a limited period, or acquired on condition that it shall become void on the performance or non-performance of a specified act, and the period expires or the condition is fulfilled.

Extinction on termination of necessity.

41. An easement of necessity is extinguished when the necessity comes to an end.

Illustration

A grants B a field inaccessible except by passing over A's adjoining land. B afterwards purchases a part of that land over which he can pass to his field. The right of way over A's land which B had acquired is extinguished.

42. An

Extinction of useless easement.

42. An easement is extinguished when it becomes incapable of being at any time and under any circumstances beneficial to the dominant owner.

Extinction by permanent change in dominant heritage.

43. Where, by any permanent change in the dominant heritage, the burden on the servient heritage is materially increased and cannot be reduced by the servient owner without interfering with the lawful enjoyment of the easement, the easement is extinguished, unless—

(*a*) it was intended for the beneficial enjoyment of the dominant heritage, to whatever extent the easement should be used; or

(*b*) the injury caused to the servient owner by the change is so slight that no reasonable person would complain of it; or

(*c*) the easement is an easement of necessity.

Nothing in this section shall be deemed to apply to an easement entitling the dominant owner to support of the dominant heritage.

Extinction on permanent alteration of servient heritage by superior force.

44. An easement is extinguished where the servient heritage is by superior force so permanently altered that the dominant owner can no longer enjoy such easement:

Provided that, where a way of necessity is destroyed by superior force, the dominant owner has a right to another way over the servient heritage; and the provisions of section fourteen apply to such way.

Illustrations.

(*a*) A grants to B, as the owner of a certain house, a right to fish in a river running through A's land. The river changes its course permanently and runs through C's land. B's easement is extinguished.

(*b*) Access to a path over which A has a right of way is permanently cut off by an earthquake. A's right is extinguished.

Extinction by destruction of either heritage.

45. An easement is extinguished when either the dominant or the servient heritage is completely destroyed.

Illustration.

A has a right of way over a strip of land between a cliff and the sea, which forms the whole servient heritage. The strip is completely submerged and washed away. The easement is extinguished

Illustration.

A has a right of way over a road running along the foot of a sea-cliff. The road is washed away by a permanent encroachment of the sea. A's easement is extinguished.

Extinction by unity of ownership.

46. An easement is extinguished when the same person becomes entitled to the absolute ownership of the whole of the dominant and servient heritages.

Illustrations.

(*a*) A, as the owner of a house, has a right of way over B's field. A mortgages his house, and B mortgages his field to C. Then C forecloses both mortgages and becomes thereby absolute owner of both house and field. The right of way is extinguished.

(*b*) The dominant owner acquires only part of the servient heritage: the easement is not extinguished, except in the case illustrated in section forty-one.

(*c*) The servient owner acquires the dominant heritage in connection with a third person: the easement is not extinguished.

(*d*) The separate owners of two separate dominant heritages jointly acquire the heritage which is servient to the two separate heritages: the easements are not extinguished.

(*e*) The joint owners of the dominant heritage jointly acquire the servient heritage: the easement is extinguished.

(*f*) A single right of way exists over two servient heritages for the beneficial enjoyment of a single dominant heritage. The dominant owner acquires one only of the servient heritages. The easement is not extinguished.

(*g*) A has a right of way over B's road. B dedicates the road to the public. A's right of way is not extinguished.

Extinction by non-enjoyment.

47. A continuous easement is extinguished when it totally ceases to be enjoyed as such for an unbroken period of twenty years.

A discontinuous easement is extinguished when, for a like period, it has not been enjoyed as such.

Such period shall be reckoned, in the case of a continuous easement, from the day on which its enjoyment was obstructed by the servient owner, or rendered impossible by the dominant owner; and, in the case of a discontinuous easement, from the day on which

which it was last enjoyed by any person as dominant owner:

Provided that if, in the case of a discontinuous easement, the dominant owner, within such period, registers, under the ~~Indian~~ Registration ~~Act, 1877~~, a declaration of his intention to retain such easement, it shall not be extinguished until a period of twenty years has elapsed from the date of the registration. III of 1877.

Where an easement can be legally enjoyed only at a certain place, or at certain times, or between certain hours, or for a particular purpose, its enjoyment during the said period at another place, or at other times, or between other hours, or for another purpose, does not prevent its extinction under this section.

The circumstance that, during the said period, no one was in possession of the servient heritage, or that the easement could not be enjoyed, or that a right accessory thereto was enjoyed, or that the dominant owner was not aware of its existence, or that he enjoyed it in ignorance of his right to do so, does not prevent its extinction under this section.

An easement is not extinguished under this section—

(*a*) where the cessation is in pursuance of a contract between the dominant and servient owners;

(*b*) where the dominant heritage is held in co-ownership, and one of the co-owners enjoys the easement within the said period; or

(*c*) where the easement is a necessary easement.

Where several heritages are respectively subject to rights of way for the benefit of a single heritage, and the ways are continuous, such rights shall, for the purposes of this section, be deemed to be a single easement.

Illustration.

See the revised edition, as modified up to 1st November, 1902.

Illustration.

A has, as annexed to his house, rights of way from the high road thither over the heritages X and Z and the intervening heritage Y. Before the twenty years expire, A exercises his right of way over X. His rights of way over Y and Z are not extinguished.

Extinction of accessory rights.

48. When an easement is extinguished, the rights (if any) accessory thereto are also extinguished.

Illustration.

A has an easement to draw water from B's well. As accessory thereto, he has a right of way over B's land to and from the well. The easement to draw water is extinguished under section forty-seven. The right of way is also extinguished.

Suspension of easement.

49. An easement is suspended when the dominant owner becomes entitled to possession of the servient heritage for a limited interest therein, or when the servient owner becomes entitled to possession of the dominant heritage for a limited interest therein.

Servient owner not entitled to require continuance.

50. The servient owner has no right to require that an easement be continued; and, notwithstanding the provisions of section twenty-six, he is not entitled to compensation for damage caused to the servient heritage in consequence of the extinguishment or suspension of the easement, if the dominant owner has given to the servient owner such notice as will enable him, without unreasonable expense, to protect the servient heritage from such damage.

Compensation for damage caused by extinguishment.

Where such notice has not been given, the servient owner is entitled to compensation for damage caused to the servient heritage in consequence of such extinguishment or suspension.

Illustration.

A, in exercise of an easement, diverts to his canal the water of B's stream. The diversion continues for many years, and during that time the bed of the stream partly fills up. A then abandons his easement, and restores the stream to its ancient course. B's land is consequently flooded. B sues A for compensation for the damage caused by the flooding. It is proved that A gave B a month's notice of his intention to abandon the easement and that such notice was sufficient to enable B, without

unreasonable

unreasonable expense, to have prevented the damage. The suit must be dismissed.

Revival of easements.

51. An easement extinguished under section forty-five revives (*a*) when the destroyed heritage is, before twenty years have expired, restored by the deposit of alluvion; (*b*) when the destroyed heritage is a servient building and before twenty years have expired such building is rebuilt upon the same site; and (*c*) when the destroyed heritage is a dominant building and before twenty years have expired such building is rebuilt upon the same site and in such a manner as not to impose a greater burden on the servient heritage.

An easement extinguished under section forty-six revives when the grant or bequest by which the unity of ownership was produced is set aside by the decree of a competent Court. A necessary easement extinguished under the same section revives when the unity of ownership ceases from any other cause.

A suspended easement revives if the cause of suspension is removed before the right is extinguished under section forty-seven.

Illustration.

A, as the absolute owner of field Y, has a right of way thither over B's field Z. A obtains from B a lease of Z for twenty years. The easement is suspended so long as A remains lessee of Z. But when A assigns the lease to C, or surrenders it to B, the right of way revives.

CHAPTER VI.

LICENSES.

"License" defined.

52. Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immoveable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license.

53. A

Who may grant license.

53. A license may be granted by any one in the circumstances and to the extent in and to which he may transfer his interests in the property affected by the license.

Grant may be express or implied.

54. The grant of a license may be express or implied from the conduct of the grantor, and an agreement which purports to create an easement, but is ineffectual for that purpose, may operate to create a license.

Accessory licenses annexed by law.

55. All licenses necessary for the enjoyment of any interest, or the exercise of any right, are implied in the constitution of such interest or right. Such licenses are called accessory licenses.

Illustration.

A sells the trees growing on his land to B. B is entitled to go on the land and take away the trees.

License when transferable.

56. Unless a different intention is expressed or necessarily implied, a license to attend a place of public entertainment may be transferred by the licensee; but, save as aforesaid, a license cannot be transferred by the licensee or exercised by his servants or agents.

Illustrations.

(*a*) A grants B a right to walk over A's field whenever he pleases. The right is not annexed to any immoveable property of B. The right cannot be transferred.

(*b*) The Government grant B a license to erect and use temporary grain-sheds on Government land. In the absence of express provision to the contrary, B's servants may enter on the land for the purpose of erecting sheds, erect the same, deposit grain therein and remove grain therefrom.

Grantor's duty to disclose defect

57. The grantor of a license is bound to disclose to the licensee any defect in the property affected by the license, likely to be dangerous to the person or property of the licensee, of which the grantor is, and the licensee is not, aware.

Grantor's duty not to render property unsafe.

58. The grantor of a license is bound not to do anything likely to render the property affected by the license dangerous to the person or property of the licensee.

59. When

Grantor's transferee not bound by license.

59. When the grantor of the license transfers the property affected thereby, the transferee is not as such bound by the license.

License when revocable.

60. A license may be revoked by the grantor, unless—

(*a*) it is coupled with a transfer of property and such transfer is in force

(*b*) the licensee, acting upon the license, has executed a work of a permanent character and incurred expenses in the execution.

Revocation express or implied.

61. The revocation of a license may be express or implied.

Illustrations.

(*a*) A, the owner of a field, grants a license to B to use a path across it. A, with intent to revoke the license, locks a gate across the path. The license is revoked.

(*b*) A, the owner of a field, grants a license to B to stack hay on the field. A lets or sells the field to C. The license is revoked.

License when deemed revoked.

62. A license is deemed to be revoked—

(*a*) when, from a cause preceding the grant of it, the grantor ceases to have any interest in the property affected by the license

(*b*) when the licensee releases it, expressly or impliedly, to the grantor or his representative:

(*c*) where it has been granted for a limited period, or acquired on condition that it shall become void on the performance or non-performance of a specified act, and the period expires or the condition is fulfilled:

(*d*) where the property affected by the license is destroyed or by superior force so permanently altered that the licensee can no longer exercise his right

(*e*) where the licensee becomes entitled to the absolute ownership of the property affected by the license:

(*f*) where the license is granted for a specified purpose and the purpose is attained, or abandoned, or becomes impracticable

(*g*) where

(*g*) where the license is granted to the licensee as holding a particular office, employment or character, and such office, employment or character ceases to exist;

(*h*) where the license totally ceases to be used as such for an unbroken period of twenty years, and such cessation is not in pursuance of a contract between the grantor and the licensee:

(*i*) in the case of an accessory license, when the interest or right to which it is accessory ceases to exist.

Licensee's rights on revocation.

63. Where a license is revoked, the licensee is entitled to a reasonable time to leave the property affected thereby and to remove any goods which he has been allowed to place on such property.

Licensee's rights on eviction.

64. Where a license has been granted for a consideration, and the licensee, without any fault of his own, is evicted by the grantor before he has fully enjoyed, under the license, the right for which he contracted, he is entitled to recover compensation from the grantor.

Government of India Central Printing Office.—No. 982 L. D.—800—R. B.

71

No. 6682

DIARY No. 7494

1917-1918
SECTION Legis.
SERIAL 4

FROM

MAJOR E. H. S. JAMES,
FIRST ASSISTANT TO THE RESIDENT IN MYSORE.

To

The SECRETARY to the GOVERNMENT of
HIS HIGHNESS the MAHARAJA OF MYSORE
GENERAL Department.

GEN. & REV. SECRETARIAT
III
JUDICIAL
30 AUG 1917

Dated Bangalore, 29th August 1917.

Sir,

With reference to your letter No. 165 Pol., dated the 15th August 1917, forwarding a copy of the Mysore Easements Bill, I am directed to say that the Resident sees no prima facie objection to the Bill being laid before the Legislative Council.

I have the honour to be,
Sir,
Your most obedient servant,

First Assistant Resident.

R. O. 2.—E. P. B.—7-1917—1,000.

G. R. S. VI.—S-III/91

DRAFT.

SUBJECT.....

.....

.....

Section
File No
Serial No

Diary No. of letter replied to.....

No. 103

GENERAL AND REVENUE SECRETARIAT,

( )

, the.....*19*

Date of issue.....12/9/18

Signed by.....

NOTIFICATION.

Under Rule 40 of the Rules for the conduct of business of the Mysore Legislative Council, the following Report of the Select Committee on the Mysore Easements Bill

.....

is published for general information with the Bill as amended by them.

By Order,

Secretary, Mysore Legislative Council.

[Here print the report]

To

The Compiler, *Mysore Gazette* for publication in Part III of the Gazette in English and Kannada and for supplying 100 spare copies in English and 20 copies in Kannada to this office. Proof should be sent to this office for approval before publication.

REPORT OF THE SELECT COMMITTEE ON THE MYSORE EASEMENTS BILL.

-:0:-

We the members of the Select Committee appointed to consider the Mysore Easements Bill have the honour to report that the Bill was carefully considered by us and requires no alteration except the few alterations of a purely verbal or typographical nature. The question of recognising the right of privacy and that relating to the amendment of clause S.28 (c) were discussed at great length in the Committee. In the case of the right of privacy, it has generally been recognised as an easement that may be acquired in virture of a local custom. The Bill recognises the validity of such a custom (vide clause 18) and we are of opinion that independently of such local usage the right should not be recognised. This view is in accordance with the law in British India, and the ~~consequences~~ promulgation of a different rule would lead to ~~alarming~~ serious consequences to the owners of house property.

Next, as we consider that S.28 (c) of the British India Act is not in accordance with the law as to remedies in Sections 33 and 35, the change proposed in the Bill is absolutely necessary and brings the law into accord with the law in England and with the law of British India in places where the Easements Act is not in force.

We therefore recommend that the Bill be passed.

M. Kantaraj Urs.
Mir Himza Hussain
C.S. Doraswamy Iyer
H. Chennaiya
B.K. Garudachar

R.D.

G. R. S. VI.—s-III/14]

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DRAFT.

SUBJECT.....

.....

.....

Section. Legis ~~Leg Council~~

File No. ~~5-0f17~~ 160f14

Serial No. 5

Proceedings of the Government of
H. H. the Maharaja of Mysore.

Order No. G 2258/09 13-5-19

Ordered that the accompanying Regulation (A Regulation to define and amend the law relating to Easements and Licences) which received the assent of His Highness the Maharaja, on the 7th day of May 1919, be published as Regulation No. IV of 1919, in the *Mysore Gazette* for general information.

GENERAL AND REVENUE SECRETARIAT,

( )

, *the*.....191 .

Date of issue 15-5-19

Signed by Mr P. Mahadevayya

For Chief Secretary to Government.

May this be—

(i) Printed?

(ii) Treated as a standing order?

(iii) Published in the "Gazette" English part?

(iv) Translated?

(v) Placed at the disposal of the Press?

(vi) Published in the "Gazette" Kannada part?

To

The Compiler, *Mysore Gazette*, for publication in Part III of the Gazette, in English and Kannada and for supply of 100 spare copies in English, and 25 spare copies in Kannada to this office, and 200 spare copies in English and 50 spare copies in Kannada to the Curator, Government Central Book Depot, Bangalore. Proofs should be sent to this office for approval before publication.

Copy to Translation Section.

REGULATION No. IV OF 1919.

(Received the Assent of His Highness the Maharaja, on the 7th day of May 1919.)

A Regulation to define and amend the law relating to Easements and Licenses.

PRICE ANNAS. 0-2-9

The Mysore Easements Regulation

(No. IV of 1919.)

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REGULATION No. IV OF 1919.

(Received the assent of his Highness the Maharaja on the 7th day of May 1919.)

A Regulation to define and amend the law relating to Easements and Licenses.

Preamble. Whereas it is expedient to define and amend the law relating to Easements and Licenses; His Highness the Maharaja is pleased to enact as follows:—

PRELIMINARY.

Short title. **1.** (1) This Regulation may be called the Mysore Easements Regulation:

Extent (2) It extends to the whole of Mysore; and

Commencement. (3) It shall come into force on the first day of July 1919.

Savings. **2.** Nothing herein contained shall be deemed to affect any law not hereby expressly repealed, or to derogate from—

(*a*) any right of the Government to regulate the collection, retention and distribution of the water of rivers and streams flowing in natural channels, and of natural lakes and ponds, or of the water flowing, collected, retained or distributed in or by any channel or other work constructed at the public expense for irrigation;

(*b*) any customary or other right (not being a license) in or over immovable property which the Government, the public or any person may possess irrespective of other immovable property; or

(*c*) any right acquired, or arising out of a relation created, before this Regulation comes into force.

Repeal of Regulation IV of 1911, sections 26 and 27. **3.** Sections 26 and 27 of the Mysore Limitation Regulation, 1911, and the definition of "easement" contained in that Regulation, are repealed. All references in any act or Regulation to the said sections or to sections 26 and 27 of Act No. XV of 1877, shall be read as made to sections 15 and 16 of this Regulation.

CHAPTER I.

OF EASEMENTS GENERALLY.

"Easement defined.

4. An easement is a right which the owner or occupier of certain land possesses, as such, for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon, or in respect of, certain other land not his own.

Dominant and servient heritages and owners.

The land for the beneficial enjoyment of which the right exists is called the dominant heritage, and the owner or occupier thereof the dominant owner; the land on which the liability is imposed is called the servient heritage, and the owner or occupier thereof the servient owner.

Explanation.—In the first and second clauses of this section, the expression "land" includes also things permanently attached to the earth: the expression "beneficial enjoyment" includes also possible convenience, remote advantage, and even a mere amenity; and the expression "to do something" includes removal and appropriation by the dominant owner for the beneficial enjoyment of the dominant heritage, of any part of the soil of the servient heritage or any thing growing or subsisting thereon.

Illustrations.

(*a*) A, as the owner of a certain house, has a right of way thither over his neighbour B's land for purposes connected with the beneficial enjoyment of the house. This is an easement.

(*b*) A, as the owner of a certain house, has the right to go on his neighbour B's land, and to take water for the purposes of his household out of a spring therein. This is an easement.

(*c*) A, as the owner of a certain house, has the right to conduct water from B's stream to supply the fountains in the garden attached to the house. This is an easement.

(*d*) A, as the owner of a certain house and farm, has the right to graze a certain number of his own cattle on B's field, or to take for the purpose of being used in the house, by himself, his family, guests, lodgers and servants, water, or fish out of C's tank, or timber out of D's wood, or to use, for the purpose of manuring his land, the leaves which have fallen from the trees on E's land. These are easements.

(*e*) A dedicates to the public the right to occupy the surface of certain land for the purpose of passing and re-passing. This right is not an easement.

(*f*) A is bound to cleanse a water-course running through his land and keep it free from obstruction for the benefit of B, a lower riparian owner. This is not an easement.

Continuous and discontinuous apparent and non-apparent easements.

5. Easements are either continuous or discontinuous, apparent or non-apparent.

A continuous easement is one whose enjoyment is, or may be, continual without the act of man.

A discontinuous easement is one that needs the act of man for its enjoyment.

An apparent easement is one the existence of which is shown by some permanent sign which, upon careful inspection by a competent person, would be visible to him.

A non-apparent easement is one that has no such sign.

Illustrations.

(*a*) A right annexed to B's house to receive light by the windows without obstruction by his neighbour A. This is a continuous easement.

(*b*) A right of way annexed to A's house over B's land. This is a discontinuous easement.

(*c*) Rights annexed to A's land to lead water thither across B's land by an aqueduct and to draw off water thence by a drain. The drain would be discovered upon careful inspection by a person conversant with such matters. These are apparent easements.

(*d*) A right, annexed to A's house to prevent B from building on his own land. This is a non-apparent easement.

Easement for limited time or on condition.

6. An easement may be permanent, or for a term of years or other limited period, or subject to periodical interruption, or exercisable only at a certain place or at certain times, or between certain hours, or for a particular purpose or on condition that it shall commence or become void or voidable on the happening of a specified event or the performance or non-performance of a specified act.

Easements restrictive of certain rights.

7. Easements are restrictions of one or other of the following rights (namely) :—

Exclusive right to enjoy.

(*a*) the exclusive right of every owner of immovable property (subject to any law for the time being in force) to enjoy and dispose of the same and all products thereof and accessions thereto ;

Rights to advantages arising from situation.

(*b*) the right of every owner of immovable property (subject to any law for the time being in force) to enjoy without disturbance by another the natural advantages arising from its situation.

Illustrations of the Rights above referred to.

(*a*) The exclusive right of every owner of land in a town to build on such land, subject to any Municipal law for the time being in force.

(*b*) The right of every owner of land that the air passing thereto shall not be unreasonably polluted by other persons.

(*c*) The right of every owner of a house that his physical comfort shall not be interfered with materially and unreasonably by noise or vibration caused by any other person.

(*d*) The right of every owner of land to so much light and air as pass vertically thereto.

(*e*) The right of every owner of land that such land, in its natural condition, shall have the support naturally rendered by the subjacent soil of another person.

Explanation.—Land is in its natural conpition when it is not excavated and not subjected to artificial pressure; and the "subjacent and adjacent soil" mentioned in this illustration means such soil only as in its natural condition would support the dominant heritage in its natural condition.

(*f*) The right of every owner of land that, within his own limits, the water which naturally passes or percolates by, over or through his land shall not, before so passing or percolating, be unreasonably polluted by other persons.

(*g*) The right of every owner of land to collect and dispose within his own limits of all water under the land which does not pass in a defined channel and all water on its surface which does not pass in a defined channel.

(*h*) The right of every owner of land that the water of every natural stream which passes by, through or over his land in a defined natural channel shall be allowed by other persons to flow within such owner's limits without interruption and without material alteration in quantity, direction, force, or temperature: the right of every owner of land abutting on a natural lake or pond into or out of which a natural stream flows, that the water of such lake or pond shall be allowed by other persons to remain within such owner's limits without material alteration in quantity or temperature.

(*i*) The right of every owner of upper land that water naturally rising in, or falling on, such land and not passing in defined channels, shall be allowed by the owner of adjacent lower land to run naturally thereto.

(*j*) The right of every owner of land abutting on a natural stream, lake or pond to use and consume its water for drinking, household purposes and watering his cattle and sheep; and the right of every such owner to use and consume the water for irrigating such land, and for the purposes of any manufactory situate thereon, provided that he does not thereby cause material injury to other like owners.

Explanation.—A natural stream is a stream, whether permanent or intermittent, tidal or tideless, on the surface of land or underground, which flows by the operation of nature only and in a natural and known course.

CHAPTER II.

THE IMPOSITION, ACQUISITION AND TRANSFER OF EASEMENTS.

Who may impose easements.

8. An easement may be imposed by any one in the circumstances, and to the extent, in and to which he may transfer his interest in the heritage on which the liability is to be imposed.

60. 8.

Illustrations.

(*a*) A is tenant of B's land under a lease for an unexpired term of twenty years, and has power to transfer his interest under the lease. A may impose an easement on the land to continue during the time that the lease exists or for any shorter period.

(*b*) A is tenant for his life of certain land with remainder to B absolutely. A cannot, unless with B's consent, impose an easement thereon which will continue after the determination of his life-interest.

(*c*) A, B and C are co-owners of certain land. A cannot without the consent of B and C, impose an easement on the land or on any part thereof.

(*d*) A and B are lessees of the same lessor, A of a field X for a term of five years, and B of a field Y for a term of ten years. A's interest under his lease is transferable; B's is not. A may impose on X, in favour of B, a right of way terminable with A's lease.

Servient owners.

9. Subject to the provisions of section 8, a servient owner may impose on the servient heritage any easement that does not lessen the utility of the existing easement. But he cannot, without the consent of the dominant owner, impose an easement on the servient heritage which would lessen such utility.

Illustrations.

(*a*) A has, in respect of his mill, a right to the uninterrupted flow thereto, from sunrise to noon, of the water of B's stream. B may grant to C the right to divert the water of the stream from noon to sunset: provided that A's supply is not thereby diminished.

(*b*) A has, in respect of his house, a right of way over B's land. B may grant to C, as the owner of a neighbouring farm, the right to feed his cattle on the grass growing on the way: provided that A's right of way is not thereby obstructed.

Lessor and mortgagor.

10. Subject to the provisions of section 8, a lessor may impose, on the property leased any easement that does not derogate from the rights of the lessee as such, and a mortgagor may impose, on the property mortgaged, any easement that does not render the security insufficient. But a lessor or mortgagor cannot, without the consent of the lessee or mortgagee, impose any other easement on such property, unless it be to take effect on the termination of the lease of the redemption of the mortgage.

Explanation.—A security is insufficient within the meaning of this section unless the value of the mortgaged property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the amount for the time being due on the mortgage.

Lessee

11. No lessee or other person having a derivative interest may impose on the property held by him as such

an easement to take effect after the expiration of his own interest, or in derogation of the right of the lessor or the superior proprietor.

Who may acquire easements.

12. An easement may be acquired by the owner of the immovable property for the beneficial enjoyment of which the right is created, or, on his behalf, by any person in possession of the same.

One of two or more co-owners of immovable property may, as such, with or without the consent of the other or others, acquire an easement for the beneficial enjoyment of such property.

No lessee of immovable property can acquire, for the beneficial enjoyment of other immovable property of his own, an easement in or over the property comprised in his lease.

Easements of necessity and *quasi*-easements.

13. Where one person transfers or bequeaths immovable property to another—

(*a*) If an easement in other immovable property of the transferor or testator is necessary for enjoying the subject of the transfer or bequest, the transferee or legatee shall be entitled to such easement; or

(*b*) if such an easement is apparent and continuous and necessary for enjoying the said subject as it was enjoyed when the transfer or bequest took effect, the transferee or legatee shall, unless a different intention is expressed or necessarily implied, be entitled to such easement;

(*c*) if an easement in the subject of the transfer or bequest is necessary for enjoying other immovable property of the transferor or testator, the transferor or the legal representative of the testator shall be entitled to such easement; or

(*d*) if such an easement is apparent and continuous and necessary for enjoying the said property as it was enjoyed when the transfer or bequest took effect, the transferor, or the legal representative of the testator, shall unless a different intention is expressed or necessarily implied, be entitled to such easement.

Where a partition is made of the joint property of several persons,—

(*e*) if an easement over the share of one of them is necessary for enjoying the share of another of them, the latter shall be entitled to such easement, or

(*f*) if such an easement is apparent and continuous and necessary for enjoying the share of the latter as it

was enjoyed when the partition took effect, he shall unless a different intention is expressed or necessarily implied, be entitled to such easement.

The easements mentioned in this section, clauses (*a*), (*c*) and (*e*), are called easements of necessity.

Where immovable property passes by operation of law, the persons from and to whom it so passes are, for the purpose of this section, to be deemed, respectively, the transferor and transferee.

Illustrations.

(*a*) A sells B a field then used for agricultural purposes only. It is inaccessible except by passing over A's adjoining land or by trespassing on the land of a stranger. B is entitled to a right of way, for agricultural purposes only, over A's adjoining land to the field sold.

(*b*) A, the owner of two fields, sells one to B, and retains the other. The field retained was at the date of the sale used for agricultural purposes only and is inaccessible except by passing over the field sold to B. A is entitled to a right of way, for agricultural purposes only, over B's field to the field retained.

(*c*) A sells B a house with windows overlooking A's land which A retains. The light which passes over A's land to the windows is necessary for enjoying the house as it was enjoyed when the sale took effect. B is entitled to the light, and A cannot afterwards obstruct it by building on his land.

(*d*) A sells B a house with windows overlooking A's land. The light passing over A's land to the windows is necessary for enjoying the house as it was enjoyed when the sale took effect. Afterwards A sells the land to C. Here C cannot obstruct the light by building on the land, for he takes it subject to the burdens to which it was subject in A's lands.

(*e*) A is the owner of a house and adjoining land. The house has windows overlooking the land. A simultaneously sells the house to B and the land to C. The light passing over the land is necessary for enjoying the house as it was enjoyed when the sale took effect. Here A impliedly grants B a right to the light, and C takes the land subject to the restriction that he may not build so as to obstruct such light.

(*f*) A is the owner of a house and adjoining land. The house has windows overlooking the land. A, retaining the house, sells the land to B, without expressly reserving any easement. The light passing over the land is necessary for enjoying the house as it was enjoyed when the sale took effect. A is entitled to the light, and B cannot build on the land so as to obstruct such light.

(*g*) A, the owner of a house, sells B a factory built on adjoining land. B is entitled, as against A, to pollute the air, when necessary, with smoke and vapours from the factory.

(*h*) A, the owner of two adjoining houses, Y and Z, sells Y to B, and retains Z. B is entitled to the benefit of all the gutters and drains common to the two houses and necessary for enjoying Y as it was enjoyed when the sale took effect, and A is entitled to the benefit.

of all the gutters and drains common to the two houses and necessary for enjoying Z as it was enjoyed when the sale took effect.

(*i*) A, the owner of two adjoining buildings, sells one to B, retaining the other. B is entitled to a right to lateral support from A's building, and A is entitled to a right to lateral support from B's building.

(*j*) A, the owner of two adjoining buildings, sells one to B and the other to C. C is entitled to lateral support from B's building, and B is entitled to lateral support from C's building.

(*k*) A grants lands to B for the purpose of building a house therein. B is entitled to such amount of lateral and subjacent support from A's land as is necessary for the safety of the house.

(*l*) Under the Land Acquisition Regulation, 1894, a Railway Company compulsorily acquires a portion of B's land for the purpose of making a siding. The Company is entitled to such amount of lateral support from B's adjoining land as is essential for the safety of the siding.

(*m*) Owing to the partition of joint property, A becomes the owner of an upper room in a building, and B becomes the owner of the portion of the building immediately beneath it, A is entitled to such amount of vertical support from B's portion as is essential for the safety of the upper room.

(*n*) A lets a house and grounds to B for a particular business. B has no access to them other than by crossing A's land. B is entitled to a right of way over that land suitable to the business to be carried on by B in the house and grounds.

Direction of wire of necessity.

14. When a right to a way of necessity is created under section 13, the transferor, the legal representative of the testator, or the owner of the share over which the right is exercised, as the case may be, is entitled to set out the way; but it must be reasonably convenient for the dominant owner.

When the person so entitled to set out the way refuses or neglects to do so, the dominant owner may set it out.

Acquisition by prescription.

15. Where the access and use of light or air, to and for any building have been peaceably enjoyed therewith, as an easement, without interruption, and for twenty years,

and where support from one person's land, or things affixed thereto, has been peaceably received by another person's land subjected to artificial pressure, or by things affixed thereto, as an easement, without interruption, and for twenty years,

and where a right of way or any other easement has been peaceably and openly enjoyed by any person claiming title thereto, as an easement, and as of right, without interruption, and for twenty years,

the right to such access and use of light or air, support or other easement shall be absolute.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

Explanation I.—Nothing is an enjoyment within the meaning of this section when it has been had in pursuance of an agreement with the owner or occupier of the property over which the right is claimed, and it is apparent from the agreement that such right has not been granted as an easement, or, if granted as an easement, that it has been granted for a limited period, or subject to a condition on the fulfilment of which it is to cease.

Explanation II.—Nothing is an interruption within the meaning of this section, unless where there is an actual cessation of the enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorizing the same to be made.

Explanation III.—Suspension of enjoyment in pursuance of a contract between the dominant and servient owners is not an interruption within the meaning of this section.

Explanation IV.—In the case of an easement to pollute water, the said period of twenty years begins when the pollution first prejudices perceptibly the servient heritage.

When the property over which a right is claimed under this section belongs to Government, this section shall be read as if for the words "twenty years" the words "sixty years" were substituted.

Illustrations

(*a*) A suit is brought in 1883 for obstructing a right of way. The defendant admits the obstruction, but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him claiming title thereto as an easement and as of right, without interruption, from 1st January, 1862, to 1st January, 1882. The plaintiff is entitled to judgment.

(*b*) In a like suit, the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that for a year of that time the plaintiff was entitled to possession of the servient heritage as lessee thereof and enjoyed the right as such lessee. The suit shall be dismissed, for the right of way has not been enjoyed "as an easement" for twenty years.

(*c*) In a like suit, the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves

that the plaintiff on one occasion during the twenty years had admitted that the user was not of right and asked his leave to enjoy the right. The suit shall be dismissed, for the right of way has not been enjoyed "as of right" for twenty years.

Exclusion in favour of reversioner of servient heritage.

16. Provided that, when any land upon, over or from which any easement has been enjoyed or derived has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the said last-mentioned period of twenty years, in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land.

Illustrations.

A sues for a declaration that he is entitled to a right of way over B's land. A proves that he has enjoyed the right for twenty-five years, but B shows that during ten of these years C had a life-interest in the land, that on C's death, B became entitled to the land, and that within two years after C's death, he contested A's claim to the right. The suit must be dismissed, as A, with reference to the provisions of this section, has only proved enjoyment for fifteen years.

Rights which cannot be acquired by prescription.

17. Easements acquired under Section 15 are said to be acquired by prescription, and are called prescriptive rights.

None of the following rights can be so acquired:—

(*a*) a right which would tend to the total destruction of the subject of the right, or the property on which, if the acquisition were made, liability would be imposed;

(*b*) a right to the free passage of light or air to an open space of ground;

(*c*) a right to surface-water not flowing in a stream and not permanently collected in a pool, tank or otherwise;

(*d*) a right to underground water not passing in a defined channel.

Customary easements.

18. An easement may be acquired in virtue of a local custom. Such easements are called customary easements.

Illustrations.

(*a*) By the custom of a certain village, every cultivator of village land is entitled, as such, to graze his cattle on the common pasture. A, having become the tenant of a plot of uncultivated land in the village, breaks up and cultivates that plot. He thereby acquires an easement to graze his cattle in accordance with the custom.

(*b*) By the custom of a certain town, no owner or occupier of a house can open a new window therein so as substantially to invade his neighbour's privacy. A builds a house in the town near B's house. A thereupon acquires an easement that B shall not open new windows in his house so as to command a view of the portions of A's house which are ordinarily excluded from observation, and B acquires a like easement with respect to A's house.

Transfer of dominant heritage passes easement

19. Where the dominant heritage is transferred or devolves, by act of parties or by operation of law, the transfer or devolution shall, unless a contrary intention appears, be deemed to pass the easement to the person in whose favour the transfer or devolution takes place.

Illustration.

A has certain land to which a right of way is annexed. A lets the land to B for twenty years. The right of way vests in B and his legal representative so long as the lease continues.

CHAPTER III.

THE INCIDENTS OF EASEMENTS.

Rules controlled by contract or title.

20. The rules contained in this chapter are controlled by any contract between the dominant and servient owners relating to the servient heritage, and by the provisions of the instrument or decree, if any, by which the easement referred to was imposed.

Incidents of customary easements.

And when any incident of any customary easement is inconsistent with such rules, nothing in this chapter shall affect such incident.

Bar to use unconnected with enjoyment.

21. An easement must not be used for any purpose not connected with the enjoyment of the dominant heritage.

Illustrations.

(*a*) A, as owner of a farm Y has a right of way over B's land to Y. Lying beyond Y, A has another farm Z, the beneficial enjoyment of which is not necessary for the beneficial enjoyment of Y. He must not use the easement for the purpose of passing to and from Z.

(*b*) A, as owner of a certain house, has a right of way to and from it. For the purpose of passing to and from the house, the right may be used, not only by A, but by the members of his family, his guests, lodgers, servants, workmen, visitors and customers; for this is a purpose connected with the enjoyment of the dominant heritage. So, if A lets the house, he may use the right of way for the purpose of collecting the rent and seeing that the house is kept in repair.

22. The dominant owner must exercise his right in the mode which is least onerous to the servient owner; and when the exercise of an easement can without detriment to the dominant owner be confined to a determinate part of the servient heritage, such exercise shall, at the request of the servient owner, be so confined.

Exercise of easement.

Confinement of exercise of easement.

Illustrations.

(*a*) A has a right of way over B's fields; A must enter the way at either end, and not at any intermediate point.

(*b*) A has a right annexed to his house to cut thatching grass in the B's swamp. A, when exercising his easement, must cut the grass so that the plants may not be destroyed.

23. Subject to the provisions of section 22, the dominant owner may, from time to time, alter the mode and place of enjoying the easement, provided that he does not thereby impose any additional burden on the servient heritage.

Right to alter mode of enjoyment.

Exception.—The dominant owner of a right of way cannot vary his line of passage at pleasure, even though he does not thereby impose any additional burden on the servient heritage.

Illustrations.

(*a*) A, the owner of a saw-mill, has a right to a flow of water sufficient to work the mill. He may convert the saw-mill into a corn mill, provided that it can be worked by the same amount of water.

(*b*) A has a right to discharge on B's land the rain-water from the eaves of A's house. This does not entitle A to advance his eaves if by so doing, he imposes a greater burden on B's land.

(*c*) A, as the owner of a paper-mill, acquires a right to pollute a stream by pouring in the refuse liquor produced by making in the mill paper from rags. He may pollute the stream by pouring in similar liquor produced by making in the mill paper by a new process from bamboos provided that he does not substantially increase the amount, or injuriously change the nature of the pollution.

(*d*) A, a riparian owner, acquires as against the lower riparian owners, a prescriptive right to pollute a stream by throwing sawdust into it. This does not entitle A to pollute the stream by discharging into it poisonous liquor.

24. The dominant owner is entitled, as against the servient owner, to do all acts necessary to secure the full enjoyment of the easement; but such acts must be done at such time and in such manner as, without detriment to the dominant owner, to cause the servient owner as little inconvenience as possible; and the dominant owner must repair, as far as practicable, the damage (if any) caused by the act to the servient heritage.

Right to do acts to secure enjoyment.

Accessory rights.

Rights to do acts necessary to secure the full enjoyment of an easement are called accessory rights.

Illustrations.

(*a*) A has an easement to lay pipes in B's land to convey water to A's cistern. A may enter and dig the land in order to mend the pipes, but he must restore the surface to its original state.

(*b*) A has an easement of a drain through B's land. The sewer with which the drain communicates is altered. A may enter upon B's land and alter the drain, to adapt it to the new sewer, provided that he does not thereby impose any additional burden on B's land.

(*c*) A, as owner of a certain house, has a right of way over B's land. The way is out of repair, or a tree is blown down and falls across it. A may enter on B's land and repair the way or remove the tree from it.

(*d*) A, as owner of a certain field, has a right of way over B's land. B renders the way impossible. A may deviate from the way and pass over the adjoining land of B, provided that the deviation is reasonable.

(*e*) A, as owner of a certain house, has a right of way over B's field. A may remove rocks to make the way.

(*f*) A has an easement of support from B's wall. The wall gives way. A may enter upon B's land and repair the wall.

(*g*) A has an easement to have his land flooded by means of a dam in B's stream. The dam is half swept away by an inundation. A may enter upon B's land and repair the dam.

Liability for expenses necessary for preservation of easement.

25. The expenses incurred in constructing works or making repairs, or doing any other act necessary for the use or preservation of an easement, must be defrayed by the dominant owner.

Liability for damage from want of repair.

26. Where an easement is enjoyed by means of an artificial work, the dominant owner is liable to make compensation for any damage to the servient heritage arising from the want of repair of such work.

Servient owner not bound to do anything.

27. The servient owner is not bound to do anything for the benefit of the dominant heritage, and he is entitled, as against the dominant owner, to use the servient heritage in any way consistent with the enjoyment of the easement; but he must not do any act tending to restrict the easement or to render its exercise less convenient.

Illustrations.

(*a*) A, as owner of a house, has a right to lead water and send sewage through B's land. B is not bound as servient owner to clear the watercourse or scour the sewer.

(*b*) A grants a right of way through his land to B as owner of a field. A may feed his cattle on grass growing on the way, provided that B's right of way is not thereby obstructed; but he must not build

a wall at the end of his land so as to prevent B from going beyond it, nor must he narrow the way so as to render the exercise of the right less easy than it was at the date of the grant.

(*c*) A, in respect of his house, is entitled to an easement of support from B's wall. B is not bound as servient owner to keep the wall standing and in repair. But he must not pull down or weaken the wall so as to make it incapable of rendering the necessary support.

(*d*) A, in respect of his mill, is entitled to a watercourse through B's land. B must not drive stakes so as to obstruct the watercourse.

(*e*) A, in respect of his house, is entitled to a certain quantity of light passing over B's land. B must not plant trees so as to obstruct the passage to A's windows of that quantity of light.

Extent o easements.

28. With respect to the extent of easements and the mode of their enjoyment, the following provisions shall take effect :—

Easement of necessity.

An easement of necessity is co-extensive with the necessity as it existed when the easement was imposed.

Other easements.

The extent of any other easement and the mode of its enjoyment must be fixed with reference to the probable intention of the parties, and the purpose for which the right was imposed or acquired.

In the absence of evidence as to such intention and purpose—

Right of way.

(*a*) a right of way of any one kind does not include a right of way of any other kind:

Right to light or air acquired by grant.

(*b*) the extent of a right to the passage of light or air to a certain window, door or other opening, imposed by a testamentary or non-testamentary instrument, is the quantity of light or air that entered the opening at the time the testator died or the non-testamentary instrument was made:

Prescriptive right to light or air.

(*c*) the extent of a prescriptive right to the passage of light or air to a certain window, door or other opening, is that quantity of light or air which was reasonably sufficient, coming through that opening, for the convenient and comfortable use and enjoyment of the house and its beneficial employment as it was enjoyed at the commencement of the prescriptive period:

Prescriptive right to pollute air and water.

(*d*) the extent of a prescriptive right to pollute air or water is the extent of the pollution at the commencement of the period of user on completion of which the right arose: and

Other prescriptive rights.

(*e*) the extent of every other prescriptive right and mode of its enjoyment must be determined by the accustomed user of the right.

Increase of easement.

29. The dominant owner cannot, by merely altering or adding to the dominant heritage, substantially increase an easement.

Where an easement has been granted or bequeathed so that its extent shall be proportionate to the extent of the dominant heritage, if the dominant heritage is increased by alluvion, the easement is proportionately increased, and if the dominant heritage is diminished by diluvion, the easement is proportionately diminished.

Save as aforesaid, no easement is affected by any change in the extent of the dominant or the servient heritage.

Illustrations.

(*a*) A, the owner of a mill, has acquired a prescriptive right to divert to his mill part of the water of a stream. A alters the machinery of his mill. He cannot thereby increase his right to divert water.

(*b*) A has acquired an easement to pollute a stream by carrying on a manufacture on its banks by which a certain quantity of foul matter is discharged into it. A extends his works and thereby increases the quantity discharged. He is responsible to the lower riparian owners for injury done by such increase.

(*c*) A, as the owner of a farm, has a right to take, for the purpose of manuring his farm, leaves which have fallen from the trees on B's land. A buys a field and unites it to his farm. A is not thereby entitled to take leaves to manure this field.

Partition of dominant heritage.

30. Where a dominant heritage is divided between two or more persons, the easement becomes annexed to each of the shares, but not so as to increase substantially the burden of the servient heritage: provided that such annexation is consistent with the terms of the instrument, decree or revenue proceeding (if any) under which the division was made, and, in the case of prescriptive rights, with the user during the prescriptive period.

Illustrations.

(*a*) A house to which a right of way by a particular path is annexed, is divided into two parts, one of which is granted to A, the other to B. Each is entitled, in respect of his part, to a right of way by the same path.

(*b*) A house to which is annexed the right of drawing water from a well to the extent of fifty buckets a day is divided into two distinct heritages, one of which is granted to A, the other to B. A and B are each entitled, in respect of his heritage to draw from the well fifty buckets a day; but the amount drawn by both must not exceed fifty buckets a day.

(*c*) A, having in respect of his house an easement of light, divides the house into three distinct heritages. Each of these continues to have the right to have its windows unobstructed.

31. In the case of excessive user of an easement the servient owner may, without prejudice to any other remedies to which he may be entitled, obstruct the user, but only on the servient heritage: provided that such user cannot be obstructed when the obstruction would interfere with the lawful enjoyment of the easement. Obstruction in case of excessive user.

Illustration.

A, having a right to the free passage over B's land of light to four windows six feet by four, increases their size and number. It is impossible to obstruct the passage of light to the new windows without also obstructing the passage of light to the ancient windows. B cannot obstruct the excessive user.

CHAPTER IV.

THE DISTURBANCE OF EASEMENTS.

32. The owner or occupier of the dominant heritage is entitled to enjoy the easement without disturbance by any other person. Right to enjoyment without disturbance.

Illustration.

A, as owner of a house, has a right of way over B's land. C unlawfully enters on B's land, and obstructs A in his right of way. A may sue C for compensation, not for the entry, but for the obstruction.

33. The owner of any interest in the dominant heritage, or the occupier of such heritage, may institute a suit for compensation for the disturbance of the easement or of any right accessory thereto: provided that the disturbance has actually caused substantial damage to the plaintiff. Suit for disturbance of easement.

Explanation I.— The doing of any act likely to injure the plaintiff by affecting the evidence of the easement, or by materially diminishing the value of the dominant heritage, is substantial damage within the meaning of this section and Section 34.

Explanation II.— Where the easement disturbed is a right to the free passage of light passing to the openings in a house, no damage is substantial within the meaning of this section, unless it falls within the first explanation, or interferes materially with the physical comfort of the plaintiff, or prevents him from carrying on the business, if any, which was carried on at the commencement of the prescriptive period in the dominant

heritage as beneficially as he had done previous to instituting the suit.

Explanation III.— Where the easement disturbed is a right to the free passage of air to the openings in a house, damage is substantial within the meaning of this section if it interferes materially with the physical comfort of the plaintiff, though it is not injurious to his health.

Illustration.

(*a*) A places a permanent obstruction in a path over which B, as tenant of C's house has a right of way. This is substantial damage to C, for it may affect the evidence of his reversionary right to the easement.

(*b*) A, as owner of a house, has a right to walk along one side of B's house. B builds a verandah overhanging the way about 10 feet from the ground, and so as not to occasion any inconvenience to foot-passengers using the way. This is not substantial damage to A.

When cause of action arises for removal of support.

34. The removal of the means of support to which a dominant owner is entitled does not give rise to a right to recover compensation, unless and until substantial damage is actually sustained.

Injunction to restrain disturbance.

35. Subject to the provisions of the Specific Relief Act, 1877, sections 52 to 57 (both inclusive), an injunction may be granted to restrain the disturbance of an easement—

(*a*) if the easement is actually disturbed,—when compensation for such disturbance might be recovered under this chapter;

(*b*) if the disturbance is only threatened or intended,—when the act threatened or intended must necessarily, if performed, disturb the easement.

Abatement of obstruction of easement.

36. Notwithstanding the provisions of Section 24, the dominant owner cannot himself abate a wrongful obstruction of an easement.

CHAPTER V

THE EXTINCTION, SUSPENSION AND REVIVAL OF EASEMENTS.

Extinction by dissolution of right of servient owner.

37. When, from a cause which preceded the imposition of an easement, the person by whom it was imposed ceases to have any right in the servient heritage, the easement is extinguished.

Exception.—Nothing in this section applies to an easement lawfully imposed by a mortgagor in accordance with Section 10.

Illustrations.

(*a*) A transfers Sultanpur to B on condition that he does not marry C. B imposes an easement on Sultanpur. Then B marries C. B's interest in Sultanpur ends, and with it the easement is extinguished.

(*b*) A, in 1860, lets Sultanpur to B for thirty years from the date of the lease. B, in 1861, imposes an easement on the land in favour of C, who enjoys the easement peaceably and openly as an easement without interruption for twenty-nine years. B's interest in Sultanpur then ends, and with it C's easement.

(*c*) A and B, tenants of C, have permanent transferable interests in their respective holdings. A imposes on his holding an easement to draw water from a tank for the purpose of irrigating B's land. B enjoys the easement for twenty years. Then A's rent falls into arrear and his interest is sold. B's easement is extinguished.

(*d*) A mortgages Sultanpur to B, and lawfully imposes an easement on the land in favour of C in accordance with the provisions of Section 10. The land is sold to D in satisfaction of the mortgage debt. The easement is not thereby extinguished.

Extinction by release.

38. An easement is extinguished when the dominant owner releases it, expressly or impliedly, to the servient owner.

Such release can be made only in the circumstances and to the extent in and to which the dominant owner can alienate the dominant heritage.

An easement may be released as to part only of the servient heritage.

Explanation I.—An easement is impliedly released—

(*a*) where the dominant owner expressly authorises an act of a permanent nature to be done on the servient heritage, the necessary consequence of which is to prevent his future enjoyment of the easement, and such act is done in pursuance of such authority;

(*b*) where any permanent alteration is made in the dominant heritage of such a nature as to show that the dominant owner intended to cease to enjoy the easement in future.

Explanation II.—Mere non-user of an easement is not an implied release within the meaning of this section.

Illustrations.

(*a*) A, B and C are co-owners of a house to which an easement is annexed. A, without the consent of B and C, releases the easement. This release is effectual only as against A and his legal representative.

(*b*) A grants B an easement over A's land for the beneficia enjoyment of his house. B assigns the house to C, B then purports to release the easement. The release is ineffectual.

(*c*) A having the right to discharge his eaves droppings into B's yard, expressly authorizes B to build over this yard to a height which will interfere with the discharge. B builds accordingly. A's easement is extinguished to the extent of the interference.

(*d*) A, having an easement of light to a window, builds up that window with bricks and mortar so as to manifest an intention to abandon the easement permanently. The easement is impliedly released.

(*e*) A, having a projecting roof by means of which he enjoys an easement to discharge eaves droppings on B's land, permanently alters the roof, so as to direct the rain-water into a different channel, and discharge it on C's land. The easement is impliedly released.

Extinction by revocation.

39. An easement is extinguished when the servient owner, in exercise of a power reserved in this behalf revokes the easement.

Extinction on expiration of limited period or happening of dissolving condition

40. An easement is extinguished where it has been imposed for a limited period, or acquired on condition that it shall become void on the performance or non-performance of a specified act, and the period expires or the condition is fulfilled.

Extinction on termination of necessity.

41. An easement of necessity is extinguished when the necessity comes to an end.

Illustrations.

A grants B a field inaccessible except by passing over A's adjoining land. B afterwards purchases a part of that land over which he can pass to his field. The right of way over A's land which B had acquired is extinguished.

Extinction of useless easement.

42. An easement is extinguished when it becomes incapable of being at any time and under any circumstances beneficial to the dominant owner.

Extinction by permanent change in dominant heritage.

43. Where by any permanent change in the dominant heritage, the burden on the servient heritage is materially increased and cannot be reduced by the servient owner without interfering with the lawful enjoyment of the easement, the easement is extinguished unless—

(*a*) it was intended for the beneficial enjoyment of the dominant heritage, to whatever extent the easement should be used; or

(*b*) the injury caused to the servient owner by the change is so slight that no reasonable person would complain of it; or

(*c*) the easement is an easement of necessity.

Nothing in this section shall be deemed to apply to an easement entitling the dominant owner to support of the dominant heritage.

Extinction on permanent alteration of servient heritage by superior force.

44. An easement is extinguished where the servient heritage is by superior force so permanently altered that the dominant owner can no longer enjoy such easement:

Provided that, where a way of necessity is destroyed by superior force, the dominant owner has a right to another way over the servient heritage; and the provisions of section 14 apply to such way.

Illustrations.

(*a*) A grants to B, as the owner of a certain house, a right to fish in a river running through A's land. The river changes its course permanently and runs through C's land. B's easement is extinguished.

(*b*) Access to path over which A has a right of way is permanently cut off by an earthquake. A's right is extinguished.

Extinction by destruction of either heritage.

45. An easement is extinguished when either the dominant or the servient heritage is completely destroyed.

Illustration.

A has a right of way over a strip of land between a cliff and sea, which forms the whole servient heritage. The strip is completely submerged and washed away. The easement is extinguished.

Extinction by unity of ownership.

46. An easement is extinguished when the same person becomes entitled to the absolute ownership of the whole of the dominant and servient heritages.

Illustrations.

(*a*) A, as the owner of a house, has a right of way over B's field. A mortgages his house, and B mortgages his field to C. Then C forecloses both mortgages and becomes thereby absolute owner of both house and field. The right of way is extinguished.

(*b*) The dominant owner acquires only part of the servient heritage; the easement is not extinguished, except in the case illustrated in Section 41.

(*c*) The servient owner acquires the dominant heritage in connection with a third person: the easement is not extinguished.

(*d*) The separate owners of two separate dominant heritages jointly acquire the heritage which is servient to the two separate heritages: the easements are not extinguished.

(*e*) The joint owners of the dominant heritage jointly acquire the servient heritage: the easement is extinguished.

(*f*) A single right of way exists over two servient heritages for the beneficial enjoyment of a single dominant heritage. The dominant owner acquires one only of the servient heritages. The easement is not extinguished.

(*g*) A has a right of way over B's road. B dedicates the road to the public. A's right of way is not extinguished.

Extinction by non-enjoyment.

47. A continuous easement is extinguished when it totally ceases to be enjoyed as such for an unbroken period of twenty years.

A discontinuous easement is extinguished when, for a like period, it has not been enjoyed as such.

Such period shall be reckoned, in the case of a continuous easement, from the day on which its enjoyment was obstructed by the servient owner, or rendered impossible by the dominant owner; and, in the case of a discontinuous easement, from the day on which it was last enjoyed by any person as dominant owner.

Provided that if, in the case of a discontinuous easement, the dominant owner, within such period, registers, under the Mysore Registration Regulation, 1903, a declaration of his intention to retain such easement, it shall not be extinguished until a period of twenty years has elapsed from the date of the registration.

Where an easement can be legally enjoyed only at a certain place, or at certain times, or between certain hours, or for a particular purpose, its enjoyment during the said period at another place, or at other times, or between other hours, or for another purpose, does not prevent its extinction under this section.

The circumstance that, during the said period, no one was in possession of the servient heritage, or that the easement could not be enjoyed, or that a right accessory thereto was enjoyed, or that the dominant owner was not aware of its existence, or that he enjoyed it in ignorance of his right to do so, does not prevent its extinction under this section.

An easement is not extinguished under this section—

(*a*) where the cessation is in pursuance of a contract between the dominant and servient owners;

(*b*) where the dominant heritage is held in co-ownership, and one of the co-owners enjoys the easement within the said period; or

(*c*) where the easement is a necessary easement.

Where several heritages are respectively subject to rights of way for the benefit of a single heritage, and the ways are continuous, such rights shall, for the purpose of this section, be deemed to be a single easement.

Illustration.

A has, as annexed to his house, rights of way from the high road thither over the heritages X and Z and the intervening heritage Y. Before the twenty years expire, A exercises his right of way over X. His rights of way over Y and Z are not extinguished.

Extinction of accessory rights.

48. When an easement is extinguished, the rights (if any) accessory thereto are also extinguished.

Illustration.

A has an easement to draw water from B's well. As accessory thereto, he has a right of way over B's land to and from the well. The easement to draw water is extinguished under section 47. The right of way is also extinguished.

Suspension of easement.

49. An easement is suspended when the dominant owner becomes entitled to possession of the servient heritage for a limited interest therein, or when the servient owner becomes entitled to possession of the dominant heritage for a limited interest therein.

Servient owner not entitled to require continuance.

50. The servient owner has no right to require that an easement be continued; and, notwithstanding the provisions of Section 26, he is not entitled to compensation for damage caused to the servient heritage in consequence of the extinguishment or suspension of the easement, if the dominant owner has given to the servient owner such notice as will enable him, without unreasonable expense, to protect the servient heritage from such damage.

Compensation for damage caused by extinguishment.

Where such notice has not been given, the servient owner is entitled to compensation for damage caused to the servient heritage in consequence of such extinguishment or suspension.

Illustration.

A, in exercise of an easement, diverts to his canal the water of B's stream. The diversion continues for many years, and during that time the bed of the stream partly fills up. A then abandons his easement, and restores the stream to its ancient course. B's land is consequently flooded. B sues A for compensation for the damage caused by the flooding. It is proved that A gave B a month's notice of his intention to abandon the easement and that such notice was sufficient to enable B, without unreasonable expense, to have prevented the damage. The suit must be dismissed.

Revival of easements.

51. An easement extinguished under section 45 revives (*a*) when the destroyed heritage is, before twenty years have expired, restored by the deposit of alluvion; (*b*) when the destroyed heritage is a servient building and

before twenty years have expired such building is rebuilt upon the same site; and (*c*) when the destroyed heritage is a dominant building and before twenty years have expired such building is rebuilt upon the same site and in such a manner as not to impose a greater burden on the servient heritage.

An easement extinguished under section 46 revives when the grant or bequest by which the unity of ownership was produced is set aside by the decree of a competent Court. A necessary easement extinguished under the same section revives when the unity of ownership ceases from any other cause.

A suspended easement revives if the cause of suspension is removed before the right is extinguished under Section 47.

Illustration.

A, as the absolute owner of field Y, has a right of way thereof over B's field Z. A obtains from B a lease of Z for twenty years. The easement is suspended so long as A remains lessee of Z. But when A assigns the lease to C, or surrenders it to B, the right of way revives.

CHAPTER VI.

LICENSES.

"License defined.

52. Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license.

Who may grant license.

53. A license may be granted by any one in the circumstances and to the extent in and to which he may transfer his interests in the property affected by the license.

Grant may be express or implied

54. The grant of a license may be express or implied from the conduct of the grantor, and an agreement which purports to create an easement, but is ineffectual for that purpose, may operate to create a license.

Accessory licenses annexed by law.

55. All licenses necessary for the enjoyment of any interest, or the exercise of any right, are implied in the constitution of such interest or right. Such licenses are called accessory licenses.

Illustration.

A sells the trees growing on his land to B. B is entitled to go on the land and take away the trees.

License when transferable.

56. Unless a different intention is expressed or necessarily implied, a license to attend a place of public entertainment may be transferred by the licensee; but, save as aforesaid, a license cannot be transferred by the licensee or exercised by his servants or agents.

Illustrations.

(*a*) A grants B a right to walk over A's field whenever he pleases. The right is not annexed to any immovable property of B. The right cannot be transferred.

(*b*) The Government grant B a license to erect and use temporary grain-sheds on Government land. In the absence of express provision to the contrary, B's servants may enter on the land for the purpose of erecting sheds, erect the same, deposit grain therein and remove grain therefrom.

Grantor's duty to disclose defects.

57. The grantor of a license is bound to disclose to the licensee any defect in the property affected by the license, likely to be dangerous to the person or property of the licensee, of which the grantor is, and the licensee is not, aware.

Grantor's duty not to render property unsafe.

58. The grantor of a license is bound not to do anything likely to render the property affected by the license dangerous to the person or property of the licensee.

Grantor's transferee not bound by license.

59. When the grantor of the license transfers the property affected thereby, the transferee is not as such bound by the license.

License when revocable.

60. A license may be revoked by the grantor, unless—

(*a*) it is coupled with a transfer of property and such transfer is in force:

(*b*) the licensee, acting upon the license, has executed a work of a permanent character and incurred expenses in the execution.

Revocation express or implied.

61. The revocation of a license may be express or implied.

Illustrations.

(*a*) A, the owner of a field, grants a license to B to use a path across it. A, with intent to revoke the license, locks a gate across the path. The license is revoked.

(*b*) A, the owner of a field, grants a license to B to stack hay on the field. A lets or sells the field to C. The license is revoked.

License when deemed revoked.

62. A license is deemed to be revoked—

(*a*) when from a cause preceding the grant of it, the grantor ceases to have any interest in the property affected by the license:

(*b*) when the licensee releases it, expressly or impliedly, to the grantor or his representative:

(*c*) where it has been granted for a limited period, or acquired on condition that it shall become void on the performance or non-performance of a specified act and the period expires or the condition is fulfilled:

(*d*) where the property affected by the license is destroyed or by superior force so permanently altered that the licensee can no longer exercise his right:

(*e*) where the licensee becomes entitled to the absolute ownership of the property affected by the license:

(*f*) where the license is granted for a specified purpose and the purpose is attained, or abandoned, or becomes impracticable:

(*g*) where the license is granted to the licensee as holding a particular office, employment or character, and such office, employment or character ceases to exist:

(*h*) where the license totally ceases to be used as such for an unbroken period of twenty years, and such cessation is not in pursuance of a contract between the grantor and the licensee:

(*i*) in the case of an accessory license when the interest or right to which it is accessory ceases to exist.

Licensee's right of revocation.

63. Where a license is revoked, the licensee is entitled to a reasonable time to leave the property affected thereby and to remove any goods which he has been allowed to place on such property.

Licensee's rights on eviction.

64. Where a license has been granted for a consideration, and the licensee, without any fault of his own, is evicted by the grantor before he has fully enjoyed, under the license, the right for which he contracted, he is entitled to recover compensation from the grantor

G. R. S. VI.—S-III/16]

2 drafts

DRAFT.

SUBJECT.....

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Section. Legs.
File No. 16-14
Serial No. 6

Diary No. of letter replied to.....

No. Pol 263 Enclosure

To

The First Assistant to the Hon'ble
the Resident in Mysore.

GENERAL AND REVENUE SECRETARIAT,
( )
, the.....*191*

Date of issue 1st Sep 1919

Signed by Mr. C. S. B. Iyer

SIR,

I am directed to forward herewith 9 copies of the Mysore Easements Regn., No IV of 1919 which received the assent of H. E. the Maharaja on the 7th day of May 1919

.....

I have et

D. M. 1/8

for Chief Secretary to Government.

AR 14/8

G. R. S. VI—G/32]

SUBJECT.....

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Diary No. of letter replied to.....

GENERAL AND REVENUE SECRETARIAT

( )

, the 191 .

Date of issue..... 2/9

Signed by.....

Section Revs

File No. 16—141

Serial No. 7

No. 5287/ans

To

The Secy to Govt.
of H. E. H. the Nizam
~~of Hyderabad~~
(Judl. & Dept.)
Hyderabad (Decca

Sir,

I am directed to
forward herewith 2
copies of Regn. No. 1
of 1919 (The Hyderabad Easements Regulation
I have etc.

for Chief Secy.
over.

D. 14.

GG. 16.1.20